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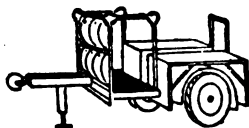
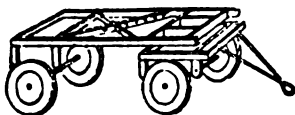
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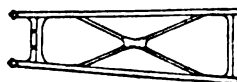
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# MANUAL OF MILITARY LAW

1929

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THE WAR OFFICE,  
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## MANUAL OF MILITARY LAW.

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## NOTE BY EDITOR TO SEVENTH EDITION.

This Manual was first published in 1884, as a sequel to the passing of the Army Discipline and Regulation Act, 1879, and the Army Act, 1881. Five revised editions have since been issued, the last (sixth) edition having been published in 1914, just before the commencement of the war. The manual was originally compiled mainly in the Office of the Parliamentary Counsel, and subsequent editions have been prepared under the supervision of lawyers employed either in or in close connection with that office, being the office in which the Army Act was drafted, and the annual Army and Air Force Acts are drafted in each year. The 6th edition and the present (7th) edition were prepared under the general editorship of the Hon. Hugh Godley, K.C. (counsel to the Lord Chairman of Committees in the House of Lords, and formerly of the Office of the Parliamentary Counsel), in close collaboration with the appropriate departments of the War Office.

The events of the war and of the period succeeding the war have necessitated very considerable modifications and additions, both in the introductory chapters and in the notes to the Army Act and to the Rules of Procedure, which Act and Rules have themselves undergone extensive amendment. Several of the introductory chapters have been almost entirely rewritten; and in the general process of revision free use has been made of the *Manual of Air Force Law* published in 1921 under the authority of the Air Council.

In connection with Chapter XIV (relating to the law and usages of war on land) particular attention is drawn to the introductory note at the commencement of the chapter, from which it will be seen that the chapter cannot at present be regarded as having been brought completely up to date in the light of the experience of actual war.

## NOTE TO 1939 REPRINT.

Owing to very heavy demands for the Manual, it became necessary to reprint it at short notice. The incorporation of the various amendments which have been made since 1929 would have involved re-paging and re-indexing, which was not possible in the time available. The book has therefore been reprinted in the form in which it was published in 1929, except that Chapter XIV, other than the appendices thereto, has been omitted. This chapter was revised in 1936, and re-issued as Amendments (No. 12) (q.v.).





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A.A. .. ..	Army Act.
A.A.A. .. ..	Army (Annual) Act.
A. & A.F.(A) Act ..	Army and Air Force (Annual) Act.
A.B. .. ..	Army Book.
A.C.I. .. ..	Army Council Instruction.
A.F. .. ..	Army Form.
A.F.A. .. ..	Air Force Act.
American Instructions	Instructions for the Government of the Armies of the United States in the Field, 1863.
A.O. .. ..	Army Order.
Archbold Crim. Ev. ..	Archbold's Pleading and Evidence in Criminal Cases.
Ariga. .. ..	La Guerre Russo-Japonaise au point de vue continentale et le droit Inter- national, by N. Ariga, 1908.
Bac. Abr. .. ..	Bacon's Abridgment of the Law, 5th edition, 1798.
Barn. & Adol. ..	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830-34.
Barn. & Ald. ..	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817-22.
Barn. & Cr. ..	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822-30.
Best and Smith ..	Best and Smith's Reports.
Bl. H. .. ..	Blackstone, H., Reports.
Bos. & P. .. ..	Bosanquet and Puller's Reports.
Brenet .. ..	La France et l'Allemagne devant le Droit International, 1870-71, by A. Brenet, 1902.
Bro. P. C. .. ..	Brown's Cases in Parliament.
Broderip & Bingham	Broderip and Bingham's Reports.
Buchanan .. ..	Buchanan's Reports (Scotch).

Burr .. ..	Burrow's Reports, 5th Edition, 5 vols., 1812.
Calvo .. ..	Le Droit International, by C. Calvo, 5th edition, 1896.
Campbell .. ..	Campbell's Reports.
Can. Crim. Cases ..	Canadian Criminal Cases.
Car. & Marsh ..	Carrington & Marshman's Reports.
C. & K. .. ..	Carrington & Kirwan's Reports.
C. & P. .. ..	Carrington & Payne's Reports, 9 vols., 1823-41.
Christian's Blackstone	Blackstone's Commentaries on the Laws of England, edited by Edward Christian, 4 vols., 1803.
Clode, Mil. Forces ..	Clode's Military Forces of the Crown, 2 vols., 1869.
C.O. .. ..	Commanding Officer.
Cobbett, Parl. Hist. ..	Cobbett's Parliamentary History.
Coke Inst. .. ..	Coke's Institutes of the Laws of England, 4 vols., 1832 and 1817.
Comm. Journ. ..	Journal of the House of Commons.
Com. Dig. .. ..	Comyn's Digest of the Laws of England, 5th edition, 7 vols., 1822.
Cox Crim. Ca. ..	Cox's Criminal Cases.
Cr. App. Rep. ..	Criminal Appeal Reports.
Dowl. & R. .. ..	Dowling and Ryland's Reports.
East .. ..	East's Reports, 16 vols., 1801-14.
F. & F. .. ..	Foster and Finlason's Reports.
French Manual ..	Manuel de Droit International à l'usage des officiers de l'armée de terre, 3rd edition, 1893.
Garner .. ..	International Law and the World War, by J. W. Garner, 1920. (2 vols.)
Geneva Conference Actes .. ..	Convention de Genève. Actes de la Conférence de Révision. Genève, 1906.
Geneva Convention ..	Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field.
Grose, Mil. Antiquities	Military Antiquities and History of Ancient Armour, by Capt. F. Grose, 1801.
Guelle .. ..	Précis des lois de la Guerre, by J. Guelle, vol. 1, 1884.
Hague Conference, 1899	Blue Book. Correspondence respecting the Peace Conference held at The Hague in 1899. C. 9534.

Hague Conference, 1907 Actes .. ..	Deuxième Conférence Internationale de la Paix. Actes et documents. The Hague, 1907.
Hague Rules .. ..	Annex to the Convention concerning the Laws and Customs of War on Land, 1907, entitled " Regulations respecting the laws and customs of war on land."
Hale, Hist. Com. Law.	Hale's History of the Common Law, 4th edition.
Hallam, Const. Hist.	Constitutional History of England, by A. H. Hallam. 3 vols., 7th edition, 1854.
Hawkins .. ..	Hawkins' Pleas of the Crown, 2 vols, 6th edition, 1777.
H.L. .. ..	House of Lords Reports.
Holtzendorff .. ..	Handbuch des Völkerrechts, edited by Dr. F. von Holtzendorff, vol. IV., 1889.
Hough, Mil. Prec. ..	Precedents in Military Law, by W. Hough Lieut.-Col. E.I.C.S., 1855.
I.R. .. ..	Law Reports, Ireland.
J.A.G... ..	Judge-Advocate-General.
J.P. .. ..	Justice of the Peace Reports.
Jur. .. ..	The Jurist Reports.
Jur. (N.S.) .. ..	The Jurist Reports (new series).
K.R. .. ..	King's Regulations for the Army and the Army Reserve (1928 edition).
Kriegsbrauch... ..	Kriegsbrauch in Landkriege (Kriegs- geschichtliche Einzelschriften), edited by the German Great General Staff (Military Historical Section). Berlin, 1902.
Lingard .. ..	History of England, by John Lingard.
L.J. (M.C.) .. ..	Law Journal Reports (Magistrates' Cases).
L.J. (N.S.) .. ..	Law Journal (new series).
L.J. (Q.B.) .. ..	Law Journal Reports (Queen's Bench).
Loening .. ..	Professor Loening's Articles in the "Revue Droit International," 1872 and 1873.
Longuet .. ..	Le droit actuel de la guerre terrestre, by Captain F. Longuet, 1901.
L.R., [ ] A.C. ..	Law Reports, Appeal Cases since 1890.
L.R. [ ] Ch. ..	Law Reports, Chancery Division since 1890.
L.R., Ch. Div. ..	Law Reports, Chancery Division.
L.R., C.C.R .. ..	Law Reports, Crown Cases Reserved.
L.R., C.P.D. .. ..	Law Reports, Common Pleas Division.
L.R., Ex. .. ..	Law Reports, Exchequer.

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L.R., P.C. .. ..	Law Reports, Privy Council Appeals.
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L.R., P.D. .. ..	Law Reports, Probate Division, 1875-90.
L.R., P. & D... ..	Law Reports, Probate and Divorce, 1865-75.
L.R., Q.B. .. ..	Law Reports, Queen's Bench.
L.R., Q.B.D. .. ..	Law Reports, Queen's Bench Division (before 1890).
L.R. [    ] Q.B. ..	Law Reports, Queen's Bench Division (since 1890).
Lewin, C.C. .. ..	Lewin's Crown Cases.
Lords' Journ .. .	Journals of the House of Lords.
Lord Raymond ..	Lord Raymond's Reports, 2 vols. 4th edition, 1792.
L.T. .. ..	<i>Law Times</i> Reports.
Man. & Gr. .. ..	Manning and Granger's Reports.
M. & S. .. ..	Maule and Selwyn's Reports, 6 vols. 1814-29.
M. & W. .. ..	Meeson and Welsby's Reports, 16 vols. 1837-49.
McArthur .. ..	McArthur on Courts-Martial.
Mod. Rep. .. ..	Modern Reports, 12 vols. 5th edition, 1793.
Moo. C.C. .. ..	Moody's Crown Cases Reserved.
Moore's Digest ..	A Digest of International Law, by J. B. Moore, Washington, 1906.
N.C.Q. .. ..	Non-commissioned officer.
Neutrality Convention	Convention respecting the Rights and Duties of Neutral Powers and Persons, 1907
Official Account of Franco-German War	The Franco-German War, 1870-71, translated by Major F. C. H. Clarke, London, 1874-84.
O. in C. ....	Order in Council.
Opening of Hostilities Convention	Convention Relative to the Opening of Hostilities, 1907.
Oppenheim .. ..	International Law, by L. Oppenheim, vol. I., 1905 ; vol. II., 1906.
Phipson .. ..	Phipson's Law of Evidence.
P.W. .. ..	Royal Warrant for the Pay, &c., of the Army, 1926.



Rowe .. ..	Rowe's Reports.
R.P. .. ..	Rules of Procedure, 1926.
S.A.O. .. ..	Special Army Order.
S.C. .. ..	Court of Session (Scotland) Reports.
Shower's Rep. ..	Shower's Reports, 2 vols. 2nd edition. 1794.
Simmons .. ..	Simmons on Courts-Martial.
Skin. .. ..	Skinner's Reports.
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S.R. Regs. .. ..	Regulations for Officers of the Supplementary Reserve of Officers and for the Supplementary Reserve, 1926.
Steph. Comm. ..	Stephen's Commentaries on the Laws of England, 4 vols. 14th edition, 1903.
Steph. Dig. Crim. Law	Digest of the Criminal Law, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Steph. Dig. Ev. ..	Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Stubbs, Constit. Hist.	Constitutional History of England, by William Stubbs, M.A., Regius Professor of Modern History, Oxford. 4th-6th editions, 1896-7.
Takahashi .. ..	International Law applied to the Russo-Japanese War, by S. Takahashi (English edition), London, 1908.
Taunt. .. ..	Taunton's Reports (Common Pleas, 1807-19), 8 vols.
T.A. .. ..	Territorial Army.
T.A. & M. Act ..	Territorial Army and Militia Act, 1921.
T.A. Regs. .. ..	Regulations for the Territorial Army. 1929.
Thring .. ..	Chapter XIV., entitled "The Customs of War," by the late Lord Thring in the Manual of Military Law (1899 edition).
<i>Times</i> .. ..	<i>The Times</i> Newspaper.
T.L.R. .. ..	<i>Times</i> Law Reports.
T.R. .. ..	Term Reports (Durnford and East), 4 vols., 1794-1809.
T.R.F. Act .. ..	The Territorial and Reserve Forces Act, 1907.
Von Widdern.. ..	Krieg an den rückwärtigen Verbindungen der deutschen Heere, 1870-71, by Colonel Cardinal von Widdern.

Washburne	..	An abstract from the official correspondence of E. B. Washburne, United States Minister to France, entitled "America's Aid to Germany," St. Louis, 1905. (It is therein stated that the official edition of the correspondence published by the Government Printing Office, 1878, has been out of print since 1884.)
W.R. .. ..	..	Weekly Reporter (Irish).
Well. Desp. ..	..	Wellington Despatches, 1838.
Wills .. ..	..	Wills' Theory and Practice of the Law of Evidence.
Wilson's Rep.	..	Wilson's Reports.

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# PART I

## CHAPTER I

### INTRODUCTORY

1. The object of this manual is to assist officers of the Army in acquiring information in respect of those branches of law with which they may have occasion to deal in the execution of their duties. Object of the Manual.

2. By the law of England a man who joins the Army, whether as an officer or as a soldier, does not cease to be a citizen<sup>1</sup>. With a few exceptions<sup>2</sup>, his position under the ordinary law of the land remains unaffected. If he commits an offence against the criminal law, he can be tried and punished for it as if he were a civilian. Similarly, in respect of civil<sup>3</sup> rights, duties, and liabilities, although a few privileges are granted to him, and a few restrictions imposed upon him, for the purpose of enabling him the better to fulfil his army engagement<sup>4</sup>, the ordinary law in general applies to him. Legal position of officers and soldiers.

3. Whilst, however, remaining subject (with these qualifications) to the ordinary law of England, he has become subject also to an entirely distinct code known as "military law," which governs the members of the Army and regulates the conduct of officers and soldiers as such at all times and at all places, in peace and in war, at home and abroad. Military law is contained in the Army Act,<sup>5</sup> the Acts relating to the Reserve and Auxiliary Forces, and certain other Acts applied to the Army,<sup>6</sup> supplemented by the Rules of Procedure,<sup>7</sup> by the King's Regulations for the Army and the Army Reserve, by other regulations, *e.g.*, those for the Militia (Supplementary Reserve) and Territorial Army, by Royal Warrant, *e.g.*, those relating to pay, promotion, &c., and by Army Orders and Army Council Instructions. Military law: its nature.

The Army Act is an Act of Parliament dealing with discipline, courts-martial, enlistment, and other cognate subjects, and has in itself no permanent operation, for it continues in force so long only

<sup>1</sup> "It is, therefore, highly important that the mistake should be corrected which supposes that an Englishman by taking upon him the additional character of a soldier puts off any of the rights or duties of an Englishman," *per* Sir J. Mansfield, C.J., in *Burdett v. Abbott* (1812) 4 Taunt. 401. See also *Heddon v. Evans* (1919) 35 T.L.R. 642.

<sup>2</sup> See Ch. XII.

<sup>3</sup> The reader must bear in mind two senses in which lawyers use the word "civil." As a rule, being little concerned with the military code of law, they use the word habitually in contradistinction to "criminal," speaking and writing of "civil law," "civil courts," and "civil proceedings" as opposed to "criminal law," "criminal courts" and proceedings therein. On the other hand, when occasion arises, they use the term "civil" in its wider sense in opposition to "military" (or "naval" or "air-force"). The context should, however, always show in which sense the word is used in any particular passage.

<sup>5</sup> See Part II of Manual.

<sup>6</sup> See Part III of Manual.

**Ch. I** as Parliament from time to time decides.<sup>1</sup> It is part of the "statute law" of England; and, with the considerable difference that so much of it as relates to discipline is administered by army tribunals and not by civil judges, it is construed in the same manner and carried into effect under the same conditions as to evidence and otherwise, as the ordinary criminal law of England.<sup>2</sup>

Its purpose.

The object of this special code of law is twofold :—(i) to provide for the maintenance of discipline among the troops and other persons forming part of, or following, the forces; for which purpose acts and omissions which in civil life may be mere breaches of contract—e.g., desertion or disobedience to orders—must, if committed by soldiers, even in time of peace, be made punishable offences, whilst in war every act or omission which impairs a man's fighting efficiency must be dealt with severely; and (ii) to provide for administrative matters, such as terms of service, enlistment, discharge and billeting. The term "military law" may, therefore, be used properly as including provisions of both the above classes, but in practice it is more often used with reference to the disciplinary provisions alone.

Description of law of riot and insurrection.

4. There is not in England, as in many foreign countries, a special law defining the relations between the military and civil power in cases of riot and insurrection. Troops when called out to assist the civil power in these cases are under military law as soldiers, but they are also as citizens subject to the ordinary civil law of England to the same extent as if they were not soldiers. Their military character is superimposed on their civil character, and does not obliterate it.<sup>4</sup> The rioters or insurgents are wholly under the ordinary civil law, and are in no respect subject to military law, or to the "customs of war." Troops employed against armed rioters are, it is true, rendered by the Army Act<sup>5</sup> subject to military law as if they were on active service, and the rioters were an enemy; but this enactment relates only to the government of the troops. The rioters are an enemy only while actually resisting, and when force ceases to be used the rioters, whether prisoners or otherwise, must be tried or otherwise dealt with according to civil law. The law, then, of riot and insurrection is not necessarily part of the military education of an officer, except in so far as some knowledge of it is necessary as a guide for his own conduct, when required by his military obligations to assist the civil power.<sup>6</sup>

Laws and usages of war on land.

5. There is one other code of law with which an officer should have some acquaintance, *vis.*, that known as the "Laws and Usages of War on Land."<sup>7</sup> These consist of certain rules, depending in part on the recognised practice of civilized nations, and in part on express written agreement between them,

<sup>1</sup> The Army Act is annually brought into operation by the Army and Air Force (Annual) Act, which must become law by 30th April. By this system of annual Acts Parliament retains control over the land forces of the Crown. See Ch. II, para. 83.

<sup>2</sup> The "statute law" is the law expressly enacted in Acts of Parliament, and is contrasted with the "common law" which is that part of our law not "created or declared by express enactment, but developed by the courts from principles founded in the 'custom of the realm,' or deemed to be so." (Sir F. Pollock, in *Encyclopædia of English Law*, Vol. III, p. 141.)

<sup>3</sup> See A.A., 127, and 128; R.F. 73 (B).

<sup>4</sup> See Ch. XIII, para. 1.

<sup>5</sup> A.A. 186 (1) and 190 (20).

<sup>6</sup> See Ch. XIII.

<sup>7</sup> See Ch. XIV.

to which officers are bound to conform in administering any territory which their troops may occupy, in their methods of conducting warfare, and in any necessary intercourse between combatant forces. Ch. I  
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6. The scheme of arrangement adopted for this book is as follows :— Arrangement  
of book.

The present introductory chapter is followed by thirteen other chapters, which together form Part I.

Chapter II is a historical chapter giving a brief outline of the development in England of a standing army and of the code of military law necessary for its government. Chapter II.

The third, fourth and fifth chapters are occupied with an explanation of the disciplinary provisions of the Army Act, and of the procedure by which these provisions are enforced ; and deal with offences, arrest, the duties and powers of commanding officers, provost marshals, and courts-martial. Chapters III,  
IV, V.

As has already been said, courts-martial in admitting and rejecting evidence follow the same rules as are in force in civil courts ; and therefore in chapter VI a summary is given of the law of evidence as administered in ordinary criminal trials in England. The succeeding chapter gives a summary of such parts of the English criminal law as are likely to concern members of the forces. Its inclusion is necessary because most offences against the criminal law, when committed by persons subject to military law, may be dealt with by courts-martial even at home and in time of peace, whilst all of them can be so dealt with when committed on active service anywhere outside the United Kingdom, or when committed in time of peace outside His Majesty's dominions, or in parts of such dominions abroad where no competent civil court is near. Chapters VI,  
VII.

Courts-martial and individual officers are, in respect of acts which are illegal or in excess of their jurisdiction, subject to the control of the superior civil courts ; and chapter VIII is designed to indicate to officers the limits of the jurisdiction which they are entitled to exercise either as members of courts-martial or individually, and the circumstances and mode in which their acts in either capacity may be called in question. Chapter  
VIII.

Enlistment, billeting, and impressment of carriages, &c., are dealt with in the ninth, tenth and eleventh chapters, and occasion is taken to give there a sketch of the history and constitution of the forces, with a view to assisting officers desirous of studying the subject. Chapters IX,  
X, XI.

Chapter XII deals briefly with the points in regard to which a member of the land forces of the Crown stands in a different position from a civilian, so far as the ordinary law of the country is concerned. Chapter XII.

The scope and object of the thirteenth and fourteenth chapters, intituled " Employment of Troops in Aid of the Civil Power " and " The Laws and Usages of War on Land " have been already stated at sufficient length. Chapters  
XIII, XIV.

Part II contains the Army Act and Rules of Procedure, both of which are fully and carefully annotated. They are followed by the Rules for Field Punishment, forms and memoranda relating to courts-martial, and by various orders relating to discipline. Part II.  
(Army Act  
and Rules,  
&c.)

## Ch. I

Part III.  
(Miscellaneous  
Enactments,  
&c.)

Martial law.  
Meaning of  
term.

Part III contains extracts from the statutes relating to the reserve forces and Territorial Army, and certain other miscellaneous Acts, regulations and orders to which an officer may require to refer.

7. It is necessary in conclusion to say a few words as to the term "martial law," the careless use of which has frequently led to confusion. In the proper sense of the term, "martial law" means the suspension of ordinary law and the government of a country (or parts of it) by military tribunals of its own army. It must be carefully distinguished from "military law," the code which regulates the conduct of soldiers as such but does not apply to civilians, and from the law (also spoken of as "martial law") which a commander in occupation of a foreign country imposes upon the inhabitants thereof. In many foreign countries the Constitution recognises the right of the Executive, when riot or war is apprehended, to declare by proclamation a "state of siege," under which the ordinary law is suspended and the country is subordinated to military authority; in other words, "martial law" in the proper sense of the term is "proclaimed". In such a case the civil courts cannot afterwards, at the suit of an aggrieved person, enter upon an enquiry as to whether the circumstances were in fact such as to justify the issue of the proclamation and acts done in obedience to it.

The English Constitution, however, has made no permanent provision for such emergencies, and martial law in this proper sense of the term can only be established lawfully by, or by regulations made under, an Act of Parliament expressly authorising the step.<sup>1</sup> It is therefore frequently said that "no such thing as martial law exists under our system of government." This statement is perfectly true; but at the same time it may mislead, for there is yet another sense in which modern writers sometimes use the term "martial law." In time of invasion or rebellion, or in expectation thereof, exceptional powers are often assumed by the Crown, acting usually (though by no means necessarily) through its military forces, for the suppression of hostilities or the maintenance of good order within its territories (whether the United Kingdom, or British possessions); and the expression "martial law" is sometimes employed as a name for this common-law right of the Crown and its servants to repel force by force in the case of invasion, insurrection or riot, and to take such exceptional measures as may be necessary for the purpose of restoring peace and order.<sup>2</sup> The intention to exercise such exceptional powers and to take such exceptional measures is generally announced by the issue of a "proclamation of martial law"; but on the one hand such a proclamation is not necessary, as the right to exercise these powers depends on the actual circumstances and not on the proclamation;

<sup>1</sup> See the provisions made as to Ireland by 39 Geo. III. c. 11 (1); 43 Geo. III. c. 117; and 3 & 4 Will. IV. c. 4; 10 & 11, Geo. V. c. 31; and see also the Defence of the Realm Acts passed during the Great War, and the regulations thereunder.

So too in a self-governing British dominion a special statute of the local legislature would be necessary; but in a British possession under the direct legislative authority of the Crown a Royal Proclamation would be as effective as an Act of Parliament in the United Kingdom.

<sup>2</sup> As to this use of the term "martial law," see Dicey's "Law of the Constitution," and Holland's "Handbook of the Laws and Customs of War."

and on the other hand the proclamation of itself in no degree suspends the ordinary law, or substitutes any other kind of law in its stead, but operates only by way of warning that the Government is about to resort, in a given district, to such forcible measures as may be necessary to repel invasion or suppress insurrection, as the case may be. To obviate any question as to the legality of the measures taken for this purpose (whether or not they have been preceded by a proclamation of martial law) it has been usual subsequently to pass an Imperial or local Act of Indemnity for the protection of those engaged, so far as the steps taken by them have been reasonably necessary for the purpose, and carried out in good faith,<sup>1</sup> and for the confirmation of the sentences passed by military courts.<sup>2</sup>

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<sup>1</sup> Indemnity Acts were passed in Cape Colony and Natal in 1900-1902; and in the United Kingdom in 1920 (10 & 11 Geo. V. c. 48).

If no Indemnity Act was passed in such a case, the ordinary courts could, at the suit of an aggrieved person, enquire and decide whether the circumstances justified the servants of the Crown in their actions.

<sup>2</sup> Courts which dispense "martial law" (e.g. to inhabitants of occupied territory and prisoners of war) are spoken of as "military courts," as distinct from statutory "courts-martial."

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## CHAPTER II

### HISTORY OF MILITARY LAW

Military law in early times consisted of Articles of War issued when war broke out.

Government of troops in time of war by Articles of War.

Account of early Articles of War.

Severity of early Articles.

1. In the early periods of our history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the Constable, or of the Peers, and other experienced persons; or were enacted by the Commander-in-Chief in pursuance of an authority for that purpose given in his commission from the Crown<sup>1</sup>. These Ordinances or Articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace. Military law, in time of peace, did not come into existence till the passing of the first Mutiny Act in 1689.

2. The system of governing troops on active service by Articles of War issued under the prerogative power of the Crown, whether by the King himself or by the Commander-in-Chief or other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of annual Mutiny Acts,<sup>2</sup> and did not actually cease till the prerogative power of issuing such Articles was superseded, in 1803, by a corresponding statutory power.<sup>3</sup>

3. Numerous copies of these Articles are in existence, made on the occasions of the various wars, both foreign and domestic, in which England was from time to time involved. The earliest complete code seems to have been the "Statutes, Ordinances, and Customs" of Richard II, issued by him to his army in the ninth year of his reign (1385), and probably on the occasion of the war with France.<sup>4</sup> These are followed by the statutes of Henry V, made by him during his conquest of France.<sup>5</sup> Domestic dissensions gave occasion for the orders for the English army promulgated by Henry VII, before the battle of Stoke;<sup>6</sup> and in the Great Rebellion the King and the Parliamentary leaders alike governed their troops by Articles of War. On the side of the Crown, Articles or Ordinances of War, as they were then called, were established by the Earl of Northumberland in 1639, for the regulation of the army of Charles I; whilst in 1642, Lord Essex, the leader of the Parliamentary forces, under authority given by an ordinance of the Lords and Commons, put forth Articles of War almost in the same language as the Royal Articles of War.<sup>7</sup> Articles of War were also issued by Charles II in 1666, when the first Dutch war was declared, and in 1672, upon the outbreak of the second Dutch war; and by James II in 1685, on the occasion of Monmouth's rebellion.<sup>8</sup>

4. The earlier Articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they

<sup>1</sup> Grose, *Mil. Antiquities*, ii. p. 58. See commission in Rymer's *Fœdera*.

<sup>2</sup> See *Barwis v. Keppel* (1766) 2 Wilson's Rep. 314.

<sup>3</sup> See Mutiny Act of 1803 (43 Geo. III. c. 20).

<sup>4</sup> See copy printed in Grose, *Mil. Antiquities*, ii. p. 64 *et seq.*

<sup>5</sup> Grose, *Mil. Antiquities*, ii. p. 69.

<sup>6</sup> Grose, *Mil. Antiquities*, ii. p. 70.

<sup>7</sup> See these Articles set out in Clode, *Mil. Forces*, i. App. vi. and viii.

<sup>8</sup> Clode, *Mil. and Martial Law*, pp. 9-19. As to Articles of War by WILL. III. see Clode *Mil. Forces*, i. p. 503; and by Anne, 2 & 3 Anne, c. 20.



took a form not unlike that which they bore in more modern times, and the Ordinances or Articles of War issued by Charles II in 1672 formed the groundwork of the Articles of War issued in 1878, which were consolidated with the Mutiny Act in the Army Discipline and Regulation Act of 1879, now replaced by the Army Act.<sup>1</sup>

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5. Attempts were made from time to time, especially during the despotic reigns of the Tudors, to enforce military law under the prerogative of the Crown in time of peace; but no countenance was afforded to such attempts by the law of England; and commissions for the execution of military law in time of peace issued by Charles I in 1625 and the following years gave rise to the declaration in 1628, contained in the Petition of Right (3 Cha. I, c. 1), that such an exercise of the prerogative was contrary to law. The law having been thus declared, the question of the legality of the Articles of War issued in 1639 came under the notice of the Council Board in July, 1640, and the lawyers and judges were all of opinion that military law could not be executed in England "but when an enemy is really near to an army of the King's."<sup>2</sup> So, again, it was stated in Parliament by Mr. Secretary Coventry that the Articles of 1672 were only to be executed abroad<sup>3</sup>, and the operation of the Articles of 1685 was limited to the duration of Monmouth's rebellion.<sup>4</sup> In short, the only direct assistance in the enforcement of military discipline given by the law before the passing of the first Mutiny Act was afforded by certain statutes enforceable before civil and not before military tribunals, which made desertion punishable as a felony.<sup>5</sup>

Illegal attempts to enforce military law in time of peace.

6. The origin of later military courts is to be found in the Court of Chivalry, the ordinary judges of which were the Constable, or Lord High Constable (who was originally the King's General), and the Marshal, or Earl Marshal, whose duty it was to marshal the army, and to ascertain whether the persons liable to serve the King in his wars fulfilled their services.<sup>6</sup>

Court of Chivalry—the origin of military courts.

7. The Court of Chivalry formed part of the *Curia Regis*, or Supreme Court established in England by William the Conqueror. The *Curia Regis* was a Court in a double sense; first, in the sense of being composed of the great officers of State; and secondly, in the sense of being a judicial body, as each of the great officers had judicial authority over the officers and persons belonging to or having dealings with his department. In this division of jurisdiction the Constable or *Comes Stabuli*, or Master of the Horse (to

Constitution of Court of Chivalry.

<sup>1</sup> A comparison of the ancient with the more modern Articles of War will show how slight were the changes made in military law during a series of years. It is easy to trace in the Articles of Richard II. the germ of the Articles of 1878, and having regard to the changes in custom and manners, the difference in the character of the regulations is less than might have been expected.

<sup>2</sup> Clode, Mil. Forces, i. p. 23, and App. vii.

<sup>3</sup> Cobbett Parl. Hist., iv. 619.

<sup>4</sup> Clode, Mil. Forces, i. p. 79, and App. xxiv.

<sup>5</sup> 18 Henry VI. c. 19 (1439), made it a felony for a soldier to leave his captain and the King's service without licence. 7 Henry VII. c. 1 (1490), repeated by 3 Henry VIII. c. 5 (1511); provided that if a soldier immediately retained by the King departed out of the King's service without licence of his captain, it should be deemed to be felony. *The Case of Soldiers*, Coke's Reports, part vi, p. 27 (43 Eliz.), decided that the first Act was obsolete, but that the second and third were perpetual. See 2 & 3 Edw. VI. c. 2 (revived by 4 & 5 Phil. & Mar. c. 3), which imposed punishments on soldiers furnished at the cost of others, for making away with their horses, and made their departure from service without licence punishable as felony, and provided also for the punishment of officers improperly discharging soldiers.

<sup>6</sup> See an account of the duties of the Constable and Marshal, in Stubbs, *Constit. Hist.* i. p. 338, notes 1 & 2. See also Grose, *Mil. Antiquities*, i. ch. 7.

## Ch. II

use the modern designation) was Commander-in-Chief of the army, and had allotted to him the army, and all persons and matters connected therewith; while he and the Marshal together constituted the Court of Chivalry which exercised both civil and criminal jurisdiction.<sup>1</sup>

Civil jurisdiction of Court of Chivalry.

8. Its civil jurisdiction was that of a court of honour, and consisted in redressing injuries of honour, and correcting encroachments in matters of coat armour, precedence, and other distinction of families. It also exercised jurisdiction in respect of contracts connected with war out of the realm, and in this respect gradually infringed on the jurisdiction of the ordinary courts, until such infringements were restrained, and the powers of the court were defined, by two Acts passed in the reign of Richard II. The first of these (8 Rich. II. c. 5, 1384) enacted, "that all pleas and suits touching the common law of the land, and which ought to be examined and discussed by the common law, shall not hereafter be by any means drawn or holden before the Constable and Marshal, but that the court of the said Constable and Marshal shall have that which belongeth to the said court;" while the second (13 Rich. II. stat. I, c. 2, 1389) declared the jurisdiction of the court to consist in the "cognizance of contracts touching deeds of arms, and of war out of the realm, and also of things that touch arms or war within the realm which cannot be determined nor discussed by the common law, with other usages and customs to the same matters pertaining."

Criminal jurisdiction of Court of Chivalry.

9. The criminal jurisdiction of the Court, except in time of war, was confined to the punishment of murder and other civil crimes committed by Englishmen in foreign lands.<sup>2</sup> In time of war, however, its jurisdiction was extended, and the Court, which was more usually called the Court of the Constable, acquired somewhat of the character of a permanent court-martial, as it followed the march of the army, and punished summarily, and in accordance with the Articles of War for the time being in force, all offences committed by the troops.

Administration of military law by Court of Chivalry.

10. Such being the jurisdiction of the Court, it is obvious that it must from time to time have been necessary, as, for instance, in case of simultaneous military operations in different quarters, to provide for its exercise at different places at the same time, and consequently by different persons; and accordingly we occasionally find several Constables and Marshals holding office and exercising jurisdiction at the same time. It is not quite clear whether the several Constables and Marshals from time to time appointed exercised judicial functions in the administration of military law merely by virtue of their offices, or by virtue of special commissions from the Crown. Probably the power to administer such law

<sup>1</sup> See as to the jurisdiction of the Court of Chivalry, Coke, *Inst.* 1, 74b; 4 *Inst.* 127; Bar. Abr. 5th edn., ii. p. 141; Hale, *Hist. Com. Law*, p. 40; Com. Dig. iii. p. 331; Christian's *Blackstone*, iv. p. 267.

<sup>2</sup> The Court seems to have infringed on the jurisdiction of the ordinary criminal courts as well as on that of the ordinary civil courts, and such infringement was restrained by statute in 1399 (1 Henry IV. c. 14).

was chiefly conferred by commissions,<sup>1</sup> and the administration of military law was thus less affected than would otherwise have been the case by the extinction of the office of High Constable, as a permanent office, in the 13th year of the reign of Henry VIII (1521).

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11. In that year the office, which had, in accordance with the general tendency of the great offices of State in early times, become hereditary in the family of the Bohuns, Earls of Hereford and Essex, was forfeited to the Crown on the attainder and execution of Edward, Duke of Buckingham, the then High Constable, and since that time a High Constable has never been appointed permanently, but only on occasions of coronations and like ceremonies.<sup>2</sup> The office of Earl Marshal, on the other hand, long continued to be held only by grant from the Crown, and did not become hereditary till the 25th year of the reign of Henry VIII, when it was granted to Thomas Howard, Duke of Norfolk, and his heirs male, in which line it still continues.

Extinction of office of High Constable.

12. This change seriously affected the ordinary jurisdiction of the Court of Chivalry;<sup>3</sup> but does not seem to have materially affected the administration of military law, which was subsequently provided for (as had probably been the case before the extinction of the office of High Constable), by commissions from the Crown, or by clauses inserted in the commissions of the Commanders-in-Chief authorising them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose.<sup>4</sup> These deputies consisted of officers, and out of their sittings there gradually arose a new form of military tribunal, under the denomination of a Court or Council of War, which sat at stated times under an officer of a certain rank, who was styled the president.

Administration of military law by virtue of commissions.

Councils of War.

13. The transition from a Council of War to Courts-Martial in their present form was a matter more of name than of substance. The exact time at which courts-martial under that name began to be held is not ascertained, but they are mentioned with the distinction of general and regimental courts-martial in the "Regulations for the Musters, 5 May, 1663," and in the Articles of War issued on the outbreak of the Dutch War in 1673 by Prince Rupert, as Commander-in-Chief, under the authority of a commission

Courts-Martial.

<sup>1</sup> Hale says (Hist. Com. Law, p. 40), "The Military Court held before the Constable and Marshal antiently, as the *Judices Ordinarii* in this case, or otherwise before the King's Commissioners of that jurisdiction as *Judices delegati*." See also Bac. Abr., ii. p. 152; and as to the appointment of Constables and Marshals, Grose, Mil. Antiquities, i. pp. 191 and 192. Rymer's *Fœdera*, annis 1398, 1400, and elsewhere.

<sup>2</sup> Coke, Inst. i. 74b; <sup>3</sup> Inst. 127. Grose, Mil. Antiquities, i. p. 190.  
<sup>4</sup> See Coke, Inst. i. by Hargrave and Butler, 74b, note (1). The Earl Marshal undoubtedly exercised the civil jurisdiction of the Court of Chivalry for a long time after the extinguishment of the permanent office of the Constable. See as to the jurisdiction of the Earl Marshal's Court, a letter to Sir John Somers, Attorney-General, from Robert Plot, LL.D., Hearn's Curious Discourses, ii. p. 250. See also the case of *Oldis v. Domville*, Shower's Cases in Parliament, p. 58. The last commission to the High Constable to act as a criminal judge was issued by Charles I. in 1631, upon an appeal of treason brought by Donald, Lord Rae, against David Ramsay, Esq., for treasonable words and purposes. In this Court the accused was entitled to wager of battle; but on further reflection the King withdrew his commission and the duel was never fought. See Thomson, Mil. Forces of Great Britain and Ireland, pp. 38, 39. The Court of Chivalry has never been abolished by law. In consequence of an appeal of death in 1818, the wager of battle was shortly after abolished by law. *Ashford v. Thornton*, (1816), 1 Barn. & Ald. 405.

<sup>5</sup> Grose, Mil. Antiquities, ii. p. 80 *et seq.*

**Ch. II** — from Charles II.<sup>1</sup> There was this difference between the earlier courts-martial and the military courts-martial of the present day, that in the earlier courts the general or governor of the garrison who convened the court ordinarily sat as president, and that the power of the court was plenary, and their sentences were carried into execution without the confirmation required under the present law.

Military code in time of peace rendered necessary by establishment of standing army.

14. Before the establishment of a standing army no necessity existed for a military code in time of peace; but when, after the Restoration in 1660, such a force was established, the necessity of special powers for the maintenance of discipline began to be felt. The growth of the army was, however, always regarded with jealousy, and Parliament was therefore unwilling to confer such powers on the Crown until it became absolutely necessary to do so. The small number of men forming the garrisons maintained before the Rebellion, and the armies of Charles II and James II, were tolerated rather than sanctioned by Parliament, and were therefore governed without such powers, and rather as the retainers of a great man than as an army. For though in 1662 Charles II issued Articles for the government of his guards and garrisons, offences involving the penalty of death were expressly reserved for trial by the known laws of the land, or by special commission under the Great Seal by the advice of the judges and lawyers. Again, the Articles issued by James II in 1686, which provided for the punishment of offences by courts-martial, expressly prohibited the infliction of any punishment amounting to loss of life or limb in time of peace. Discipline, therefore, was naturally lax; and when on the accession of William and Mary the maintenance of the army was sanctioned by Parliament, the loose discipline and general disaffection prevalent among the troops led to special powers being granted for their coercion.

Occasion of passing of first Mutiny Act.

15. On the 1st March, 1689, in a debate in the House of Commons on a message from William and Mary, suggesting the suspension of the Habeas Corpus Act, the necessity was urged of a measure for the regulation of the army,<sup>2</sup> and on the 13th leave was given to bring in a Bill to punish mutineers and deserters from the army for a limited time, and a committee was appointed to prepare it.<sup>3</sup> Almost at the same time 800 men enlisted by James II, who had been ordered by William to embark for Holland, mutinied at Ipswich, and marched northward, declaring that James was their king, and that they would live and die by him; and this danger, which was reported to both Houses on the 15th March<sup>4</sup> doubtless facilitated the passing of the Bill, which was introduced into the House of Commons on the 18th, and having passed through all its stages by the 28th, was passed by the House of Lords on the same day, and received the Royal Assent on the 3rd April.<sup>5</sup>

Objects and scope of first Mutiny Act.

16. This Bill, which is known as the first Mutiny Act (1 Will. & Mary, c. 5), was prefaced by a preamble declaring the necessity for and the objects of the Act in terms which were repeated

<sup>1</sup> The "Regulations for the Musters" are reproduced in App. XXIV of Walton's "History of the British Standing Army, 1660 to 1700." The Articles of 1673 are printed in the report (1866) of the Royal Commission on Recruiting the Army, Parl. Papers, 1867, Art. 59, p. 241.

<sup>2</sup> Cobbett Parl. Hist. v. pp. 154, 155.

<sup>3</sup> Cobbett Parl. Hist., v. pp. 129-182.

<sup>4</sup> 10 Comm. Journ. 47.

<sup>5</sup> 10 Comm. Journ., 49, 52, 53, 64, 67, 69; 15 Lords' Journ. 164, 165.

without substantial alteration in each subsequent Mutiny Act until the year 1878, and have now been transferred to the preamble of the annual Act bringing the Army Act into force<sup>1</sup>. Mutiny and desertion when committed by persons in their Majesties' service in the army were made punishable by death or such other punishment as by a court-martial should be inflicted. Power was given to their Majesties or the general of their army to grant commissions for summoning courts-martial for punishing such offences, and it was further provided that the Act should not exempt any officer or soldier from the ordinary process of law. The duration of the Act was limited to seven months, from the 12th April, 1689, to the 10th November in the same year.

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17. On the 19th October, 1689, Parliament reassembled, and a second Mutiny Act (1 Will. & Mary, sess. 2, c. 4) was passed during the session, which received the Royal Assent on the 23rd December, and was ordered to come into force on the 20th, so that an interval of more than a month occurred between the lapse of the first and the coming into force of the second Act.<sup>2</sup>

Second Mutiny Act.

18. Successive Mutiny Acts, with the exception of certain short intervals, were subsequently passed annually from the year 1690 to the year 1878.<sup>3</sup>

Succession of Mutiny Acts till 1878.

19. To indicate in detail the changes which took place in the various Mutiny Acts, from the first in 1689 to the termination of the series in 1879, on the passing of the Army Discipline and Regulation Act, would be out of place in the present work; but it may be useful to point out the various periods, so to speak, in military legislation, and the principal changes which took place from time to time, until military law assumed the form which it bears in the Army Act.

Periods in Mutiny Act, worthy of observation.

20. The first period lasted till 1712. During this period the Mutiny Acts did not extend to the dominions of the Crown abroad<sup>4</sup> and the principal offences punishable under them were mutiny and desertion; but no difficulty was felt from the narrow extent of the statutory provisions, inasmuch as the nation was at war during almost the whole period, and the main body of the army was in consequence on active service, and was governed by Articles of War issued by the Crown in pursuance of the prerogative.

From 1689 to 1712.

21. From 1698 to 1702 the nation was at peace, and the Mutiny Act was allowed to drop. The greater part of the army was disbanded at the same time, and though the King was allowed by

Lapse of Mutiny Act from 1698 to 1702 in time of peace.

<sup>1</sup> This preamble emphatically states: (1) That the raising or keeping a standing army within the United Kingdom *in time of peace*, unless it be with the consent of Parliament, is against law. (2) That no man can be fore-judged of life or limb, or subjected in peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of the realm. See the text of the Army and Air Force (Annual) Act, *infra*, pp. 415-417.

<sup>2</sup> Copies of the Mutiny Acts to the end of the reign of Anne will be found in the record edition of the Statutes. A copy of the first Mutiny Act will also be found in Clode, *Military and Martial Law*, App. A, p. 182; Clode, *Mil. Forces*, i. p. 499; also in Grose, *Mil. Antiquities*, ii. p. 73.

<sup>3</sup> The Mutiny Act of 1690 expired on the 20th December, 1691, and the next Act passed on the 14th March, 1692, but it was ordered to be in force from the 10th of that month. The Act of 1694 expired on the 1st March, 1695, but was continued in force from the 10th April, 1695, to the 10th April, 1696, by an Act, passed on the 22nd April, and having therefore a retrospective operation. Again, there was a lapse from the 10th April, 1698, to the 20th February, 1702. Grose, *Mil. Antiquities*, i. p. 64; and the record edition of the Statutes. See also table in Clode, *Mil. Forces*, i. pp. 389-391.

<sup>4</sup> The Act was extended to Ireland in 1702 (13 & 14 Will. III. c. 2), and to Scotland in 1707 (7 Anne, c. 4).

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Renewal of  
Act in 1702.

statute (10 Will. III, c. 1) to maintain 7,000 troops in England and 12,000 in Ireland, no special powers were conferred upon him for their government.

22. On the renewal of hostilities in 1702, the Mutiny Act was revived, and extended to Ireland; and in the next year clauses were added for the better enforcement of discipline abroad, which provided that certain offences committed abroad should be triable in England as treason or felony. These clauses, however, were accompanied by a proviso saving the power of the Crown to make Articles of War and constitute courts-martial and inflict penalties by sentence or judgment of the same beyond the seas in time of war, and by a clause empowering the Crown to grant commissions for holding courts-martial within the realm, by which persons committing crimes out of the realm against the Articles of War, and not tried by courts-martial before their return, might be tried and punished according to the Articles of War.<sup>1</sup>

Power to  
make  
Articles of  
War binding  
on the  
army in  
time of  
peace when  
out of the  
kingdom,  
conferred  
by Mutiny  
Act of 1712.

23. On the conclusion of the Peace of Utrecht in 1712, the Mutiny Act was again allowed to expire, and was replaced by an Act "for better regulating the forces to be maintained in Her Majesty's service," by which mutiny, desertion, and certain other offences were made punishable by such punishments as a court-martial should adjudge, not extending to life or limb; power being at the same time given to inflict by sentence of court-martial corporal punishment not extending to life or limb, on soldiers for immoralities, misbehaviour, or neglect of duty. The operation of this Act was restricted to Great Britain and Ireland; but at the same time the difficulty was felt of maintaining discipline amongst the troops in the colonies and elsewhere out of the kingdom, as the prerogative power of governing such troops by Articles of War had been suspended by the conclusion of peace. A statutory power was therefore given to the Crown to make Articles of War and constitute courts-martial in any of Her Majesty's dominions beyond the seas, or elsewhere beyond the seas, "in such manner as might have been done by Her Majesty's authority beyond the seas in time of war."<sup>2</sup>

Power  
extended by  
Mutiny Act  
of 1715.

24. On the breaking out of the rebellion in 1715, difficulties arose in maintaining discipline among the troops serving in the kingdom. For though troops serving elsewhere in the dominions of the Crown might be dealt with under statutory Articles of War, which could impose death for the most serious military offences, the troops in the kingdom were under a different law. The then existing Mutiny Act,<sup>3</sup> by imposing a punishment for the most serious military offences, had superseded the prerogative power of making Articles of War in respect of those offences, though committed by troops engaged in war by reason of the rebellion, but as the punishment under the Act was not to extend to life or limb, it was insufficient to maintain discipline. Accordingly an Act was passed in 1715,<sup>4</sup> reimposing the punishment of death for mutiny, desertion, and the offence now known as fraudulent enlistment, in Great Britain and Ireland, and conferring on the Crown statutory power to make "Articles for the better govern-

<sup>1</sup> 13 & 14 Will. III. c. 2; 1 Anne stat. 2, c. 20 (c. 16 in Ruffhead).

<sup>2</sup> 12 Anne c. 13, in the record edition of the Statutes (c. 12 in Ruffhead).

<sup>3</sup> 1 Geo. I. stat. 2, c. 3.

<sup>4</sup> 1 Geo. I. stat. 2, c. 9.

ment of His Majesty's forces, and inflicting penalties to be proceeded upon to sentence or judgment in courts-martial to be constituted pursuant to this Act."

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25. Subsequently<sup>1</sup> the two powers of making Articles of War for the troops in the kingdom and for those in the other dominions of the Crown were combined, and in the Act of 1718<sup>2</sup> received the form which was retained until 1803. The Act of 1718 conferred on the Crown a power to make Articles of War and constitute courts-martial with power to try offences under such articles, and inflict penalties by judgment of the same, "as well within the kingdoms of Great Britain and Ireland, as in any of His Majesty's dominions beyond the seas." The Articles of War made under the Act of 1712 and subsequent Acts not being limited to the time of war, applied to the troops also in time of peace.

Mutiny Act of 1718.

26. At about the same time the provisions of the Mutiny Act, which enacted death or corporal punishment for mutiny, desertion, and other specified offences, and which had previously been restricted to offences committed in Great Britain or Ireland, were extended to some of those offences if committed in His Majesty's dominions abroad, and to others wherever committed<sup>3</sup>; and the Act and statutory power were subsequently re-enacted annually in this form, without material alteration, until 1802.<sup>4</sup>

Extension of Mutiny Act to H.M.'s dominions abroad.

27. By these successive changes the Crown gradually acquired a complete statutory power for the government of the army in time of peace, whether at home or in the colonies, by means of the Mutiny Act and the Articles of War made thereunder, co-extensive with the prerogative power of governing troops serving in foreign countries in time of war by means of Articles of War made under the prerogative; and as further dominions abroad were gradually acquired, the Act and statutory Articles were from time to time extended, so as to provide for the enforcement of discipline among the garrisons maintained in such dominions.<sup>5</sup> The Act and statutory Articles were not, however, extended to foreign countries, as it was still assumed that the army never could be in a foreign country except in time of war, and troops engaged in active service in such countries were governed as before by the prerogative Articles.

Power to govern by Act and statutory Articles in Kingdom and colonies in time of peace co-extensive with power to govern by prerogative Articles in foreign countries in time of war.

28. That this was so is clear from the case in 1761 of *Barwis v. Keppel*,<sup>6</sup> in which the Court of King's Bench decided that neither the Mutiny Act nor the Articles of War made thereunder applied to the army when engaged in war abroad. It seems probable, however, that the Articles issued under the prerogative which governed the army when so engaged were the same in form as the statutory Articles which governed the army at other times, and

Case of *Barwis v. Keppel*.

<sup>1</sup> 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2.

<sup>2</sup> 4 Geo. I. c. 4.

<sup>3</sup> Compare 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2; 4 Geo. I. c. 4; 9 Geo. I. c. 4.

<sup>4</sup> In 1781 (21 Geo. III. c. 8) the provisions of the Act enacting punishments for certain offences were extended to the specified offences wherever committed; but the power to constitute courts-martial was still restricted to the Kingdom and the dominions of the Crown abroad.

<sup>5</sup> The Act and Articles were extended to the Channel Islands in 1756-7 (30 Geo. II. c. 6), and to the Isle of Man in 1766 (6 Geo. III. c. 8); and in 1767 (7 Geo. III. c. 10) special provisions were made as to the constitution of courts-martial in the garrisons of Goree and Senegal, and detachments therefrom. Ireland was excluded from the operation of the Act, but not of the Articles, in 1781 (21 Geo. III. c. 8), a separate Mutiny Act for that country being passed in that year by the Irish Parliament (21 & 22 Geo. III. c. 43 (1)); but it was again included after the Union.

<sup>6</sup> (1766) 2 Wilson's Rep. 314.

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Extension  
of Mutiny  
Act and  
statutory  
Articles to  
foreign  
countries in  
1803.

hence arose the question, decided in the negative in the case referred to, as to whether the Mutiny Act and statutory Articles extended to the army when engaged in war in foreign countries.

29. In 1803, by 43 Geo. III, c. 20, the great change was made of extending the Mutiny Act and the statutory Articles of War to the army whether within or without the dominions of the Crown. This alteration also was made on the occasion of a peace—the Peace of Amiens—and was made, as appears from the preamble to the Act, in order to provide for the government of the troops engaged in the war then concluded who had not yet been brought home, and who could no longer be governed by prerogative Articles, the power of making such Articles having been suspended on the conclusion of peace.

Prerogative  
Articles  
finally  
superseded.

30. On the resumption of hostilities, the Act and statutory Articles might have been again restricted in their operation to the dominions of the Crown, and the troops engaged in foreign war might have been left to be governed as before by prerogative Articles. This course, however, was not adopted, but the Act and statutory Articles were applied in 1813 towards the close of the Peninsular war to the troops without as well as to those within the dominions of the Crown<sup>1</sup>; and the prerogative power of making Articles of War in time of war was thus finally superseded by a statutory power. The law as then settled has been continued ever since, and the army, both in peace and war, was governed by the Mutiny Act and statutory Articles until the year 1879.

Army  
Discipline  
and  
Regulation  
Act, 1879.

31. This brings us to the Army Discipline and Regulation Act, 1879. The inconvenience of having a military code contained partly in an Act of Parliament and partly in Articles of War made under and deriving validity from that Act had long been felt, and led at length to the consolidation of the provisions of the Mutiny Act and Articles of War in one statute.

Army Act,  
1881.

32. Two years later the Army Discipline and Regulation Act, 1879, was repealed, and re-enacted with some amendment in the Army Act of 1881.

Thus was accomplished, after the lapse of more than a century, a wish expressed by Mr. Justice Blackstone, in his Commentaries, "That it might be thought worthy the wisdom of Parliament to ascertain the limits of military subjection, and to enact express Articles for the government of the army"<sup>2</sup>.

Annual  
Acts.

33. The Army Act has of itself no force, but requires to be brought into operation annually by another Act of Parliament, (now called "the Army and Air Force (Annual) Act"),<sup>3</sup> thus securing the constitutional principle of the control of Parliament over the discipline without which a standing army and air force cannot be maintained.<sup>4</sup> These annual Acts afford opportunities of amending the Army Act, of which considerable use is made. Unless otherwise provided, such amendments come into force in any place as from the day from which the Army Act is continued in that place.<sup>5</sup>

<sup>1</sup> 53 Geo. III. c. 17, s. 146.

<sup>2</sup> Christian's Blackstone, i. p. 415.

<sup>3</sup> The title of this Act was formerly simply the Army (Annual) Act, but has been changed since, in 1917, the Royal Air Force was constituted, and made subject to the provisions of the Air Force Act, which corresponds for that Force to the Army Act and is continued in operation annually by the same Act as continues the Army Act in force.

<sup>4</sup> See A. A. 2.

<sup>5</sup> See A. A. A., 1904, s. 14.



## CHAPTER III

### OFFENCES AND PUNISHMENTS

#### (i) OFFENCES.

##### *Classification of offences.*

1. Part I of the Army Act classifies under various heads the military offences for which persons subject to military law are, in their military capacity, punishable by court-martial. For the most part the military offences are laid down by the Army Act in the same, or nearly the same language as that of the former Mutiny Acts and Articles of War. Classi-  
fication of  
military  
offences.

The offences punishable by court-martial are, with one exception,<sup>1</sup> contained in ss. 4 to 41 of the Army Act.

2. The principle adopted in the Act is to group together military offences of a similar character in a manner intended to impress the soldier with their relative military importance. In this chapter the various groups of offences are dealt with in order; some of these offences, because of their special importance or frequent occurrence, receive more detailed notice than others but all are explained, so far as is necessary, in the notes to the Act. Principles  
of classi-  
fication.

#### *ss. 4—6. Offences in respect of Military Service.*

3. Ss. 4 and 5 deal with offences committed in relation to the enemy. These offences fall into two categories, *viz.*, those in respect of which a sentence of death may be awarded, and those in respect of which penal servitude is the maximum sentence. Cowardice in face of the enemy and assisting the enemy with arms are examples of offences which fall within the former category, while the offence of spreading reports calculated to create unnecessary alarm or despondency falls within the latter.<sup>2</sup> Offences  
in relation to  
the enemy.

4. The offences mentioned in s. 6 (1) are punishable with death and those in s. 6 (2) with penal servitude if committed on active service; if not committed on active service, the maximum sentence which can be awarded is, to an officer one of cashiering and to a soldier one of two years' imprisonment with or without hard labour. Offences  
punishable  
more severe-  
ly on active  
service than  
at other  
times.

The miscellaneous offences mentioned in s. 6 (3) fall under the same category with regard to the sentence which may be awarded as offences under s. 6 (1) or 6 (2) when not committed on active service.

It is to be observed that offences by sentinels under s. 6 (1) (k) or s. 6 (2) (e) can only be committed by a soldier. All the remaining offences under ss. 4-6 may be committed by any person subject to military law.<sup>3</sup>

#### *ss. 7-11. Mutiny and Insubordination.*

5. The term "mutiny" implies collective insubordination, Mutiny. or a combination of two or more persons to resist or to induce others

<sup>1</sup> A.A. 155.

<sup>2</sup> See specimen charges Nos. 1-4. p. 715.

<sup>3</sup> See specimen charges Nos. 5-15. pp. 716-7.

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to resist lawful military authority. A man cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specific offences laid down in s. 7. If he has not brought himself within the terms of that section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination, and the provisions of s. 8 or s. 9 will usually afford ample powers for the purpose. Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under s. 7 for causing or conspiring to cause, or joining in the mutiny, as the case may be. If no mutiny or conspiracy exists, a man can only be tried under s. 7 if the charge is one of endeavouring to persuade some person in His Majesty's military, naval or air forces to join in an intended mutiny, or of failing to inform his commanding officer of an intended mutiny.<sup>1</sup> The offence of endeavouring to seduce any person in the military, naval or air forces from allegiance to His Majesty is an offence under s. 7 (2) when committed by a person subject to military law.

Framing  
charge of  
mutiny.

6. In framing a charge therefore under s. 7, the specific act or acts which constitute the offence must always be alleged; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more, should, unless there appears to be a combined design on their part to resist authority, be charged under s. 8 or s. 9, or, if these sections are inapplicable, under s. 40 as an act to the prejudice of good order and military discipline. Provocation by a superior, or the existence of grievances, is no justification for mutiny or insubordination, though such circumstances would be allowed due weight in considering the question of punishment.

Sedition.

7. Sedition, in s. 7 of the Act, is the same offence as in the ordinary criminal law, and consists in doing any act or publishing any words tending to bring into hatred or contempt, or to excite disaffection against, the Sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of justice; it is also seditious to incite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of the law, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent and disaffection among His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects. A person is not guilty of sedition who acts in good faith, merely intending to point out errors or defects in the government or constitution or the administration of justice, or to promote alteration of the law by legal means, or to point out, with a view to their removal, matters which have a tendency to produce feelings of hatred between different classes of His Majesty's subjects. It is not, however, intended to imply that an officer or soldier is at liberty to enter on any such course of action or discussion, but simply to point out the legal meaning of the term "sedition."

A person subject to military law who is convicted of any of the offences mentioned in s. 7 may be sentenced to death or such less punishment as the Act provides.

<sup>1</sup> See specimen charges Nos. 16-18. pp. 717-8.

8. The offences of violence to superiors and of disobedience to lawful commands under s. 8 and s. 9 respectively vary much in degree of gravity according to the circumstances in which they are committed; all these offences in their gravest forms are punishable with penal servitude. Ch. III  
Violence  
and  
disobedience.

The necessary elements of the offences of striking or using or offering violence or of using threatening or insubordinate language to a superior officer are explained in the notes to s. 8 of the Act.<sup>1</sup>

9. An accused person charged with striking may be found guilty of using or offering violence; if charged with using violence may be found guilty of offering violence; or, if charged with using threatening language may be found guilty of using insubordinate language. Special  
findings  
in case  
of violence  
or  
insubord-  
ination.

10. Disobedience may be of a trivial character, or may be an offence of the most serious description, amounting, if two or more persons join in it, to mutiny. Accordingly the object of s. 9 is to enable charges to be framed in such manner as to discriminate between different degrees of the offence. Various  
degrees of  
disobedience.

The essential ingredients of the first and graver offence under the section are that the disobedience should show a wilful defiance of authority, and should be disobedience of a lawful command given personally and given in the execution of his office by a superior officer; in fact, it would ordinarily be such an offence as would be mutiny if two or more persons joined in it. In order to convict a man it must be shown (1) that a lawful command was given by a superior officer<sup>2</sup>; (2) that it was given personally by such officer; (3) that it was given by such officer in the execution of his office<sup>3</sup>; (4) that the man disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of his superior officer's authority. For example, a man who does not fall in for escort duty when ordered to do so by a non-commissioned officer, may have failed clearly to understand the order or may be slow in executing it; in such circumstances there would be no wilful defiance of authority. On the other hand, the refusal may be deliberate and obstinate, so as to show in the clearest manner an intention to defy and resist authority.

The second and less grave offence under s. 9 consists of disobedience to any lawful command given by a superior officer, which is not accompanied by the essential elements of the graver offence.

11. To constitute any offence under s. 9 it is essential that the disobedience should be wilful and deliberate, as distinguished from disobedience arising from forgetfulness or misapprehension (which might, however, be punished under s. 40). The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may constitute disobedience fully as much as a positive refusal to obey, though mere omission or hesitation can seldom constitute Essential  
ingredients  
of offence  
of dis-  
obedience.

<sup>1</sup> See specimen charges Nos. 19-21, p. 718.

<sup>2</sup> See specimen charges Nos. 22 and 23, p. 719.

<sup>3</sup> As to the meaning of "superior officer" and "in the execution of his office" see notes 3 and 4 to A.A., §.

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the graver offence referred to in the preceding paragraph ; but if the command is of a prospective nature, a man, before he can be guilty of disobedience, must have had an opportunity to obey the command even if he has said " I will not do it ". For example, if the command is to turn out for parade in half an hour, then, until the expiration of that time, no offence of disobedience to a lawful command can be committed. If the soldier on receiving the command makes a reply implying an intention to refuse, and is put in the guard detention room before the end of the half hour, he may be charged under s. 8 with using insubordinate language, or under s. 40 with conduct to the prejudice of good order and military discipline in respect of the improper language, but not with the offence of disobedience to a lawful command.

Lawful  
command.

12. " Lawful command " means not only a command which is not contrary to the ordinary civil law, but one which is justified by military law ; in other words, a lawful military command to do or not to do, or to desist from doing, a particular act. A superior officer has a right at any time to give a command, for the purpose of the maintenance of good order, or the suppression of a disturbance, or the execution of any military duty or regulation, or for any purpose connected with the amusements and welfare of a regiment or other generally accepted details of military life. But a superior officer has no right to take advantage of his military rank to give a command which does not relate to military duty or usages, or which has for its sole object the attainment of some private end. Such a command, though it may not be unlawful, is not such a lawful command as will make disobedience of it an offence under the Act. In other words, the command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay or prevent a military proceeding.

Duty of  
obedience.

13. If the command were obviously illegal, the inferior would be justified in questioning, or even in refusing to execute it, as, for instance, if he were ordered to fire on a peaceable and unoffending bystander. But so long as the orders of the superior are not obviously and decidedly in opposition to the law of the land, the duty of the soldier is to obey and (if he thinks fit) to make a formal complaint afterwards.

Religious  
scruples.

14. Religious scruples, however *bona fide*, afford no justification for neglect or refusal to obey orders. An officer cannot (for example) plead conscientious scruples as justifying a refusal to go into the trenches on a Sunday, or to pay marks of respect enjoined by superior authority to a form of religion different from his own.

Other  
acts of  
violence,  
resisting  
escort, &c.

15. S. 10 of the Army Act makes provision in paras. (1) and (2) for the punishment of acts of violence or insubordination where the offender is engaged in a quarrel, fray, &c., or is in custody. These offences as well as that of resisting an escort under para. (3) may be committed by any person subject to military law, but only officers should be charged under para. (1). The offence of breaking out of barracks, camp, or quarters, which can be committed by a soldier only, also falls under this section.<sup>1</sup>

<sup>1</sup> See specimen charges Nos. 24-27, p. 719

16. Under s. 11 neglect to obey any general or garrison or written orders is constituted as an offence triable by court-martial.<sup>1</sup> **Ch. III**  
 This section does not apply to neglect to obey verbal orders.

Neglect  
to obey  
general  
orders.

ss. 12-15. *Desertion, Fraudulent Enlistment and Absence without Leave.*<sup>2</sup>

17. The criterion between desertion and absence without leave is intention. The offence of desertion or attempting to desert His Majesty's service implies an intention on the part of the offender either not to return to His Majesty's service at all, or to escape some particular important service as mentioned in para. 20; and a soldier must not be charged with desertion or attempted desertion unless it appears that some such intention existed. Further, even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion, unless fully satisfied on the evidence that he has been guilty of desertion as above defined. On the other hand, absence without leave may be described as such short absence, unaccompanied by disguise, concealment, or other suspicious circumstances, as occurs when a soldier does not return to his corps or duty at the proper time, but the circumstances are such as to show that he did not intend to quit the service or to evade the performance of some service so important as to render the offence desertion.

Desertion  
and absence  
without  
leave.

18. It is obvious that the evidence of intention to quit the service altogether may be so strong as to be irresistible, as, for instance, if a soldier is found in plain clothes on board a steamer starting for America, or is found crossing a river to the enemy; while, on the other hand, the evidence is frequently such as to leave it extremely doubtful what the real intention of the man was. Mere length of absence is, by itself, inconclusive as a test, for a soldier who has been entrapped into bad company through drink or other causes may be absent some time without any thought of becoming a deserter; but in the example above given of a soldier found on board a steamer starting for America, there could be no doubt of the intention, though he might only have been absent a few hours.

Evidence  
of intention  
not to return.

19. Nor can desertion invariably be judged by distance, for a soldier may absent himself without leave and depart to a very considerable distance, and yet the evidence of an intention to return may be clear; whereas he may scarcely quit the camp or barrack yard, and the evidence of intention not to return (by the assumption of a disguise, for example, and other circumstances) may be complete.

Distance  
by itself  
not a  
criterion.

20. A man who absents himself in a deliberate or clandestine manner, with the view of shirking some important service, though he may intend to return when the evasion of the service is accomplished, is liable to be convicted of desertion just as if an intention never to return had been proved against him. Thus, if a man, on the eve of the embarkation of his regiment for service abroad, or when called out to aid the civil power, conceals himself in

Evasion of  
important  
service.

<sup>1</sup> See specimen charges Nos. 28 and 29, p. 720.

<sup>2</sup> See specimen charges Nos. 30-35, 37, 38, pp. 720-1.

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barracks, the court may be quite justified in presuming an intention to escape the important service on which he was ordered and in convicting him of desertion.<sup>1</sup>

Desertion  
when on  
furlough.

21. A man may be a deserter though his absence was in the first instance legal (*e.g.*, authorised by leave or furlough), the criterion being the same in all cases, namely, the intention of not returning. It is clearly shown by the King's Regulations, and by the explanation on the furlough form itself, that a soldier on furlough is still under orders, and that, if without leave he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or goes on board a ship about to sail for a distant port, he is liable to be tried and convicted of desertion though on furlough at the time. A soldier stationed, for example, at Ipswich, who obtains a pass to Bristol, and during his leave is found at Liverpool in civilian costume on board a ship about to sail for New York, may be tried for desertion.

Attempted  
desertion.

22. If a soldier commits an act which is apparently a prelude to, or an attempt at, desertion, although no actual absence can be proved, *e.g.*, if he is caught in the act of slipping past a sentry, or climbing over a barrack wall in plain clothes, he may be charged with an attempt to desert.

Surrender  
by soldier.

23. The fact that a soldier surrenders is not proof by itself that he intended to return, even though he is in uniform at the time of surrender. It may not be possible to prove where the man has been during his absence, but evidence that the military patrols had searched carefully in the neighbourhood of the barracks without finding him, would show that he must have gone to a distance or concealed himself. From this and other circumstances the court may infer that he surrendered because he could not effect his contemplated escape.

General  
provisions  
as to  
desertion.

24. A soldier charged with desertion may be found guilty of attempting to desert or of being absent without leave; and, on the other hand, a soldier charged with an attempt to desert may be found guilty of actual desertion or of being absent without leave.<sup>2</sup> In any case of doubt as to whether one or the other offence has been committed, the court should find the accused guilty of the less offence. A soldier guilty of desertion forfeits, if serving on his original engagement, the whole of his prior service, and, if serving on a re-engagement, all prior service rendered during the period of re-engagement, and is liable to serve for the term of his original enlistment, or re-engagement as the case may be, reckoned from the date of his conviction, or of the order dispensing with his trial.<sup>3</sup>

Persuading,  
&c., to  
desert.

25. In addition to the offences of desertion and attempted desertion, the offence of persuading, attempting to procure, &c., any person subject to military law to desert is punishable under s. 12. If these offences are committed on active service the penalty of death may be awarded; if not on active service, imprisonment may be awarded for the first offence and penal servitude for the

<sup>1</sup> See specimen charge No. 33, p. 720.

<sup>2</sup> See A.A. 56 (3) (4).

<sup>3</sup> A.A. 79 and 84. As to court of inquiry in case of absence without leave for twenty-one days, see A.A. 72; and as to procedure in case of confession of desertion or fraudulent enlistment, see A.A. 73.

second or any subsequent offence. S. 14 makes it an offence to assist a person subject to military law to desert, or to neglect to take steps to prevent desertion or attempted desertion.<sup>1</sup> Ch. III  
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26. As a general rule a soldier quitting his corps and enlisting in another should not be charged with desertion but with fraudulent enlistment<sup>2</sup> under s. 13, for the very act of enlisting in another corps (unless in an exceptional case) shows that he did not intend to leave His Majesty's service. On the other hand, if he does so for the purpose of avoiding a particular service—e.g., service abroad—or if during his absence he conducts himself so as to show that when he quitted the service he did not intend to return to it but changed his mind, he might properly be tried for desertion. But, as already observed, it will suffice, except in very special cases, to prefer a charge of fraudulent enlistment alone. Desertion  
and fraudulent  
enlistment.

27. Under s. 13 the offence of fraudulent enlistment applies to two classes of case, *viz.*, (1) the enlistment by a person belonging to the regular forces, or Territorial Army when embodied, into the regular forces or into any force raised in India or a colony; and (2), the enlistment of a person belonging to the regular forces into the Territorial Army, the reserve forces or the Royal Air Force, or his entry into the Royal Navy. Fraudulent  
enlistment.

The punishment for a first offence is imprisonment or less punishment; for a second or subsequent offence penal servitude may be awarded.

28. In addition to the offence of absence without leave, other offences of a similar character are dealt with in s. 15, e.g., failing to appear at an appointed place of parade. These are, so far as is necessary, referred to in the notes to the Act where are also explained certain technical requirements as to the proper proof of the offences.<sup>3</sup> Absence  
from  
parade,  
quitting  
the ranks,  
&c.

### ss. 16–18. *Disgraceful Conduct.*

29. Scandalous behaviour on the part of an officer is an offence under s. 16 and the only punishment that can be awarded is that of cashiering.<sup>4</sup> The circumstances in which a charge under this section can properly be preferred are explained in the notes to the Act. Scandalous  
behaviour  
by officer.

30. Ss. 17 and 18 (4) deal with the military offences of stealing, embezzlement and fraudulent misapplication and (in the case of s. 18 (4)) with receiving stolen property. Military  
and civil  
offences  
of stealing,  
&c.

Ordinary thefts from civilians may be dealt with by the civil courts or they may be tried by court-martial under s. 41 as civil offences; but to steal, embezzle or fraudulently misapply public or regimental money or goods or property belonging to a person subject to military law or to various military institutions has, in accordance with long established practice, been singled out for punishment as a military offence.

31. The military offences under s. 17 of stealing, embezzlement and fraudulent misapplication, or of being concerned in or conniv- Stealing,  
&c., under  
s. 17.

<sup>1</sup> See specimen charge No. 36, p. 721.

<sup>2</sup> See specimen charges Nos. 24 and 25, p. 721.

<sup>3</sup> See specimen charges Nos. 37–40, pp. 721–2.

<sup>4</sup> See specimen charges Nos. 41 and 42, p. 722.

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ing at such stealing, &c., can only be committed by persons subject to military law who are charged with or concerned in the care of public or regimental money or goods, and the offences must be in respect of such money or goods. The maximum sentence is penal servitude.

Stealing,  
&c., under  
s. 18 (4).

32. The military offences of stealing, embezzlement, and fraudulent misapplication under s. 18 (4) can be committed by any person subject to military law, but the offences must be in respect of public money or goods or the property of a person subject to military law or of a regimental institution, mess or band, or of the Navy, Army and Air Force Institutes. The maximum sentence is imprisonment.

Elements  
of offence  
of stealing  
under ss. 17  
and 18 (4).

33. The elements necessary to constitute an offence of *stealing* under either of these sections are the same as in the case of the civil offence of stealing, that is to say, the property stolen must have been taken and carried away by the offender without the consent of the owner, fraudulently and without a claim of right made in good faith, with intent, at the time of such taking, permanently to deprive the owner thereof. But a person may be guilty of stealing notwithstanding that he has lawful possession of the thing stolen, if, being a bailee or part owner thereof, he fraudulently converts it to his own use or to the use of any person other than the owner.<sup>1</sup>

Elements  
of offence  
of embezzle-  
ment under  
ss. 17 and  
18 (4).

34. The ordinary civil offence of embezzlement is committed by a person employed in the capacity of clerk or servant who fraudulently misappropriates property delivered to or received or taken into possession by him for or in the name or on the account of his master or employer. The military offence of *embezzlement* under ss. 17 and 18 (4) is of wider application, because, although the other elements of the offence are the same as in the civil offence of embezzlement, any person to whom ss. 17 and 18 (4) apply may be found guilty of embezzling the specific form of property mentioned therein though he is neither a clerk nor servant. It should be remembered that the offence of embezzlement can only be committed in respect of property which the offender has received "for" but not "from" the person to whom it belongs.<sup>2</sup>

Elements  
of offence  
of fraudulent  
misapplication  
under  
ss. 17 and 18  
(4).

35. The offence of *fraudulent misapplication* under ss. 17 and 18 (4) includes all cases where property, which is properly in the possession of the offender, is fraudulently misapplied by him either to his own use or to that of any other person. Stealing therefore, other than stealing as a bailee (see para. 33) would not be a fraudulent misapplication.<sup>3</sup>

Receiving  
under  
s. 18 (4).

36. The offence of *receiving* under s. 18 (4) is committed by a person subject to military law who receives any of the property mentioned in the paragraph knowing it to have been stolen.<sup>4</sup>

Stealing  
from a  
comrade.

37. Stealing from a person subject to military law who is a comrade is regarded as peculiarly disgraceful, seeing that in the daily routine of barrack life, soldiers must constantly leave exposed their arms, accoutrements, or kits as well as private property,

<sup>1</sup> See specimen charges Nos., 46, 53-55, pp. 723-5.

<sup>2</sup> See specimen charges Nos. 43 and 56, pp. 722 and 725.

<sup>3</sup> See specimen charges Nos. 44, 45, and 47, p. 723, and No. 108, p. 734.

<sup>4</sup> See specimen charge No. 58, p. 725.



such as money, watches, pipes, &c., trusting to the honour of their comrades. When missing articles are private property, and are found in the possession of another, there is a strong presumption that they were stolen, especially if the accused absented himself, and is discovered to have pawned or sold them. But it must be recollected that an intention to steal is essential, and that the mere taking of an article without that intent is not criminal. So that if a soldier openly takes an article belonging to another, and returns it, or, though he absented himself, did not secrete the article or make any attempt to sell or pawn it, then the presumption is against his being guilty of stealing. It will often be desirable to obtain evidence as to any custom of borrowing which may have prevailed in a particular room, or as between the accused and the owner of the article or other comrades, and as to any other circumstance tending to show whether the accused might reasonably have supposed that his taking the article would not be objected to. The restoration of an article does not, of course, by itself prove that the article was not stolen, but evidence of the above nature will often go far to show whether an article was in fact stolen or not. Again, the accused may show that he obtained the articles in a *bona fide* transaction, or that he found them apparently without an owner, and without any name or mark on them by which the owner could be found. The fact of lost articles being found in the valise, or in the bed of a soldier, is not by itself proof that he stole the articles. They might have been put there unknown to him, perhaps intentionally by the real thief. A soldier should not in such a case be tried for stealing unless there are other circumstances from which it might be inferred that the articles were in his valise or bed with his knowledge.<sup>1</sup> The improper possession by one soldier of a comrade's necessaries where there is no evidence of theft, is a different question: it is not an offence against the comrade, but is an offence against military rules, and may, irrespectively of any fraudulent intent, be punished under s. 40.

38. A subordinate is frequently tempted to commit the offence of stealing, embezzlement or fraudulent misapplication if he finds that his transactions are not regularly supervised, and that minor irregularities pass unnoticed. All officers, therefore, who have to do with the supervision of institutes or the accounts of pay serjeants or other non-commissioned officers, should be most careful to see that the forms and regulations of the service are strictly and invariably observed. Nothing can be more unjust and inexcusable than for an officer, through indolence or carelessness in doing his own duty, to expose a soldier to temptation which may prove his ruin.

Supervision of persons in position of trust.

39. An accused person charged with stealing may be found guilty of embezzlement or fraudulent misapplication; if charged with embezzlement, he may be found guilty of stealing or fraudulent misapplication.<sup>2</sup>

Special powers of court in relation to offences of stealing, &c

40. Offences of a fraudulent nature which are not particularly specified in any of the earlier provisions of the Act are dealt with in s. 18 (5). This paragraph applies to such forms of fraud as the

Other offences of a fraudulent nature.

<sup>1</sup> See Ch. VI, paras. 21-27.

<sup>2</sup> A.A. 56 (1) (2).

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Other  
disgraceful  
offences.

adulteration of beer belonging to a mess or the obtaining of money or property by false pretences with intent to defraud.<sup>1</sup>

41. It will be noticed that other disgraceful offences besides those relating to dishonest speculation fall under s. 18. Malingering; feigning or producing disease or infirmity; wilful maiming with intent to render unfit for service; wilful misconduct or disobedience producing or aggravating disease or infirmity or delaying its cure; and disgraceful conduct of a cruel, indecent or unnatural kind are all constituted as offences under the section.<sup>2</sup> The maximum sentence for each of these offences is two years' imprisonment, with or without hard labour.

s. 19. *Drunkenness.*

Drunkenness

42. S. 19 of the Army Act creates only one offence, *vis.*, drunkenness, and in all cases, whether the act was committed on duty or not on duty, the charge should be "drunkenness"<sup>3</sup>. If the offence was committed when on duty, or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the particulars of the charge.

Drunkenness includes intoxication from the effects of opium or any similar drug as well as from liquor. Under the Army Act, an officer should be tried for the specific offence of drunkenness, whether on duty or not on duty, as the case may require; instead of being charged, as formerly, in the case of drunkenness not on duty, with conduct unbecoming the character of an officer and a gentleman.

Drunkenness  
by N.C.Os.

43. A non-commissioned officer may be tried by a court-martial for even a single act of drunkenness, whether committed on duty or not on duty. The commanding officer has, however, complete discretion whether to send the offender for trial or not, as the obligation of dealing summarily with a private soldier charged with drunkenness otherwise than under aggravating circumstances, does not extend to the case of a non-commissioned officer.<sup>4</sup>

Drunkenness  
by private  
soldier

44. A private soldier can also be tried by court-martial under s. 19 for any act of drunkenness, whether on duty or not on duty; but the practical effect of this section is materially affected by s. 46, which declares that the commanding officer shall deal summarily with the case of a soldier charged with drunkenness, unless he has been guilty of drunkenness on not less than four occasions in the preceding 12 months, or unless the offence was committed on active service or on duty, or after the offender was warned for duty, or when the offender was by reason of drunkenness found unfit for duty. Although, therefore, under s. 19, courts-martial have complete jurisdiction to try and punish cases of drunkenness which are directed to be dealt with summarily under s. 46, and this jurisdiction is not limited by s. 46, yet a commanding officer will be guilty of a grave breach of duty and of the provisions of the Act, if he disregards the directions in s. 46 with respect to dealing summarily with such a case of drunkenness charged against a private soldier.<sup>5</sup>

<sup>1</sup> See specimen charges Nos. 57-59, p. 725.

<sup>2</sup> See specimen charges Nos. 48-52 and 60, pp. 723-5.

<sup>3</sup> See specimen charge No. 61, p. 726.

<sup>4</sup> A.A. 46, 189 (1). And see K.R. 589.

<sup>5</sup> See K.R. 574-580. The directions in A.A. 46 do not affect the right of the soldier to elect to be tried by a district court-martial (A.A. 46 (8)).

45. From a military point of view, drunkenness on duty is considered in reference to the soldier being fit or not fit for duty. There cannot be any distinction between various degrees of drunkenness when on duty. Soldiers therefore are carefully inspected before being put on duty, so as to ascertain their fitness. If the superior, knowing a man to be drunk, out of good nature allowed him to proceed with the duty, or if, through carelessness, he passed a man as sober when he was not sober, then, as a rule, in awarding punishment, the man should not be treated as having been drunk on duty. Ch. III  
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Drunkenness on duty.

A soldier on the line of march is on duty from the beginning to the end of the march, and if drunk in his billet or halting place may be dealt with as having been drunk on duty.<sup>1</sup>

46. In ordinary routine circumstances, a soldier unexpectedly called on to perform some duty for which he has not been warned—as (for example) if summoned from a canteen or from some public sports—and found to be unfit for duty, should in practice be dealt with as for ordinary drunkenness. Soldier unexpectedly called on duty.

47. In the offence of drunkenness the attendant circumstances affect the amount of punishment, and evidence should be given in all cases as to the circumstances. Evidence should also be given as to whether the drunken man was riotous or not, so that punishment may be apportioned accordingly. Nothing can justify a soldier striking or offering violence to a superior, and great care is therefore enjoined to be taken to avoid bringing drunken soldiers in contact with their superiors. Mere abusive and violent language used by a drunken man, as the result of being taken into custody, should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer.<sup>2</sup> If a court-martial be required at all, discipline will generally be upheld by merely bringing the man to trial either for drunkenness (if he is liable to be tried) or for an offence under s. 40, treating the language as in the nature of riotous conduct only, and to that extent aggravating the offence. An offence of drunkenness committed when the offender is not on duty or has not been warned for duty is as a rule sufficiently dealt with by the imposition of a fine.<sup>3</sup> Evidence as to circumstances of drunkenness.

48. Drunkenness often has to be considered by courts-martial not as an offence itself, but in relation to greater offences, which it accompanies. It is a principle of English law that drunkenness is no excuse for crime.<sup>4</sup> But where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved, or reduce the offence to one of a less serious character. Thus, if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; and though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case than if the same man had used the same Drunkenness considered in relation to other offences.

<sup>1</sup> See K.R. 576.

<sup>2</sup> Where, however, a soldier under the influence of drink strikes a superior officer or is guilty of any other offence, it is the duty of the convening officer to consider carefully according to the circumstances, whether it is necessary to charge the more serious offence.

<sup>3</sup> K.R. 577.

<sup>4</sup> See generally Ch. VII, para. 6. *et seq.*

**Ch. III** language deliberately when sober. So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man was drunk, be regarded as amounting only to the less offence of simple disobedience. So, too, if it should appear that a man absenting himself in circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave. So again, a man so drunk as to be incapable of attending parade should be charged with drunkenness rather than with an offence under s. 15 (2) of the Act.

*ss. 20-22. Offences in relation to Persons in Custody.*

Offences  
in relation  
to persons  
in custody.

49. Under s. 20 a guard commander who releases, wilfully or otherwise, a person committed to his charge, or the commander or any member of an escort who wilfully, or without reasonable excuse, allows a person in his custody to escape, is liable to be sentenced to penal servitude if he acted wilfully, or to imprisonment if the offence was not wilful. S. 21 deals with various offences in connection with irregular arrest or confinement, whilst s. 22 makes it an offence for a person in arrest or confinement or prison or otherwise in lawful custody to escape or attempt to escape.<sup>1</sup> All the offences under these sections can be committed by any person subject to military law.

*ss. 23-24. Offences in relation to Property.*

Offences  
in relation  
to property.

50. Corrupt dealings in respect of supplies to the forces render any person subject to military law liable, under s. 23, to imprisonment. S. 24 is concerned with deficiencies in, improper dealings with, and injury to, various forms of military or public property issued to a soldier for his use or entrusted to his care for military purposes. It is also an offence under this section for a soldier to make away with by pawning, selling, destruction or otherwise any military or air-force decoration granted to him; wilfully to injure the property of an officer or comrade, of a regimental mess or band, or of a regimental institution or any public property; or to ill-treat a horse or other animal used in the public service.<sup>2</sup> It will be noted that an officer cannot be charged under s. 24.

*ss. 25-27. Offences in relation to False Documents and Statements.*

Falsifying  
official  
documents.

51. The offences comprised in s. 25 and especially those in the first two paragraphs of that section, dealing as they do with the falsification of official documents of a military nature, require particular notice.

Para. (1) of s. 25 deals with false or fraudulent statements or omissions with intent to defraud, knowingly made by a person in a return, pay-list &c., or other document where the document is either made or signed by the person in question or there is a duty cast upon him of ascertaining its accuracy.<sup>3</sup> If, for example,

<sup>1</sup> See specimen charges Nos. 62-67, pp. 726-7.

<sup>2</sup> See specimen charges No. 88, p. 721, and Nos. 68 and 69, p. 727.

<sup>3</sup> See specimen charges Nos. 70-73, pp. 727-8.

a quartermaster-serjeant makes false entries as to payments made by him in a book which it is his duty to keep in his official capacity, he may be charged with knowingly making false statements under this paragraph or, if there is evidence to show that the effect of the false entries would be to defraud some person, he may be charged with knowingly making fraudulent statements. Similarly if he omits to make in the book entries of payments made by him, he may, if the evidence justifies such a course, be charged with knowingly making such omissions with intent to defraud.

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52. Para. (2) of s. 25 deals with the suppression, defacement, alteration or destruction of any document by a person who has a duty to preserve or produce it, where the suppression, &c., is carried out with an intent to defraud or injure some person.<sup>1</sup>

Suppression,  
&c., of  
documents.

53. The making of false accusations or false statements of a particular character are the offences mentioned in s. 27. The first two paragraphs are applicable to officers and soldiers, the last two to soldiers only (including non-commissioned officers). To suppress knowingly and wilfully any material facts in connection with complaints for the redress of wrongs under ss. 42 and 43 of the Army Act is an offence under para. (2).<sup>2</sup>

False  
accusations;

#### ss. 28-29. *Offences in relation to Courts-martial.*

54. S. 28 contains important provisions as to the failure of persons subject to military law to attend courts-martial as witnesses after being duly summoned or ordered to attend, and as to their refusal to be sworn as witnesses or to produce documents in their possession or to answer questions to which a court-martial may legally require an answer. None of these offences is triable by the court before which the offence was committed. Similar offences by civilian witnesses are dealt with under s. 126.

Offences  
by witnesses.

55. Contempt of a court-martial by the use of insulting or threatening language or by the interruption or disturbance of the proceedings of such court is an offence under s. 28 (5) if committed by a person subject to military law. This offence may either be tried before another court-martial, or the court before which the offence is committed may order the offender to be imprisoned, with or without hard labour or, if a soldier, to undergo detention for a period not exceeding twenty-one days. Such order does not require confirmation and may be carried into effect at once. S. 126 (3) deals with contempt of court by persons not subject to military law.

Contempt  
of court.

56. S. 29 deals with the wilful giving of false evidence by persons subject to military law when examined on oath or solemn declaration before a court-martial or any court or officer authorised under the Army Act to administer an oath<sup>3</sup>; upon conviction a sentence of imprisonment, with or without hard labour, may be awarded. As in the analogous civil offence of perjury, a person charged under this section is not liable to be convicted solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

False  
evidence.

<sup>1</sup> See specimen charges Nos. 74 and 75, p. 728.

<sup>2</sup> See specimen charges Nos. 76 and 77, pp. 728-9.

<sup>3</sup> See specimen charge No. 78, p. 729.

**Ch. III****ss. 30-31. *Offences in relation to Billeting and Impressment of Carriages, &c.*****Billeting,  
&c.**

**57.** These sections do not require any special comment in this Chapter. Para. (2) of s. 30 applies to officers only.

**ss. 32-34. *Offences in relation to Enlistment.*****False  
answers,  
&c., on  
enlistment.**

**58.** The offence of fraudulent enlistment which falls under s. 13 is dealt with in para. 27 above. The provisions of ss. 32 and 33 are applicable to persons who have 'become subject to military law.'

The former section makes it an offence for such person after he has been discharged with disgrace from the Army or Royal Air Force or dismissed with disgrace from the Royal Navy to enlist in the regular forces without declaring the circumstances of his discharge or dismissal. S. 33 applies to any wilfully false answer to a question in an attestation paper.<sup>1</sup> S. 34 (general offences in relation to enlistment) does not require any detailed consideration.

**ss. 35-40. *Miscellaneous Military Offences.*****Miscellaneous  
offences.**

**59.** Ss. 35-39 do not call for special notice but it will be observed that only an officer or non-commissioned officer can commit the offence of striking or ill-treating a soldier and the other offences mentioned in s. 37.

**Conduct  
to the  
prejudice  
of order  
and discipline.**

**60.** The offence of conduct, &c., to the prejudice of good order and military discipline is fully dealt with in the notes to s. 40 where examples are given of offences commonly charged under this section.<sup>2</sup> A person subject to military law is not to be charged under s. 40 for an offence which is a specific offence under any other provision of the Act, and is not a civil offence; although the conviction of a person so charged is not necessarily invalidated. Before, then, an offender is charged under this section, the convening officer must satisfy himself not only that the act, conduct, disorder, or neglect is to the prejudice of good order and military discipline, but also that it is not any one of the offences specifically punishable under the Act. If he fails to do so he will be responsible for contravening the Act, notwithstanding that the conviction is not invalidated. Attempts to commit military offences specified in the Army Act are not, with one or two exceptions, specifically made offences, and therefore can be tried under this section.

**s. 41. *Offences punishable by ordinary Law.*****Civil  
offences.**

**61.** These offences are dealt with in Chapter VII.

**(ii) PUNISHMENTS.****Scale of  
punish-  
ments.**

**62.** Having laid down the offences, the Act provides (s. 44) a scale of punishments which can be awarded by courts-martial to officers and soldiers respectively. With two exceptions, each particular offence under the Act has a *maximum* punishment assigned to it and by s. 44 provision is made enabling the court to award a less punishment. If, for example, the maximum

<sup>1</sup> See specimen charges Nos. 79-88, pp. 720-30.

<sup>2</sup> See also specimen charges Nos. 35-64, pp. 730-2.

punishment assigned to an offence is penal servitude, either imprisonment or a punishment lower in the scale for officers or soldiers (as the case may be) can be awarded in its place. A maximum punishment is not intended to be imposed unless the offence committed is the worst of its class, or is committed by a habitual offender, or in circumstances which require an example to be made, and of course will not always be imposed even in such cases.

The two exceptions mentioned above are the offence of behaving in a scandalous manner under s. 16 where the only punishment is cashiering, and the civil offence of murder under s. 41 (2) in which case death is the only punishment.

All punishments that can be awarded by courts-martial under the Army Act are included in s. 44 with the exception of certain sentences which are applicable to warrant officers only (s. 182), and a sentence of dismissal from His Majesty's service in the case of a non-commissioned officer or private of the volunteers or Territorial Army (s. 181 (6)).

63. Under s. 44, two or more punishments included in the scale of punishments applicable to officers and soldiers respectively may and, in one case, must, be awarded in combination. Thus an officer or non-commissioned officer sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand; or a soldier sentenced to penal servitude or imprisonment may also be sentenced to be discharged with ignominy from His Majesty's service. Provisos (2), (3), (4), (6), (11) and (12) to s. 44 which deal with combined punishments must be referred to for their terms. Reference should also be made in this connection to ss. 182 and 183 dealing respectively with the punishment of a warrant officer and of a non-commissioned officer. Combined punishments.

The case referred to above where combined punishments must be given is that of an officer who, before he is sentenced to penal servitude or imprisonment, must be sentenced to be cashiered<sup>1</sup>. A non-commissioned officer sentenced to penal servitude, field punishment, imprisonment or detention is deemed to be reduced to the ranks even if a sentence of reduction is not specifically awarded by the court.<sup>2</sup>

64. The introduction, in 1906, of the punishment of detention into the scale of punishments applicable to soldiers (including non-commissioned officers) was effected with the object of saving soldiers convicted of offences against discipline under the Army Act and not discharged with ignominy, from being subjected to the stigma attaching to imprisonment. A court-martial ought not, therefore, to sentence to imprisonment a soldier convicted of a purely military offence; and if the court imposes imprisonment in contravention of this principle, the confirming officer should, except in very special circumstances, commute the sentence to a sentence of detention. If the sentence is imprisonment combined with discharge with ignominy, the confirming officer, when commuting to detention, must also remit the discharge with ignominy, as such discharge cannot accompany a sentence of detention.<sup>3</sup> Detention.

<sup>1</sup> A.A. 44 (proviso (2)).

<sup>2</sup> A.A. 183 (4).

<sup>3</sup> See generally K.R. 652;

**Ch. III**      **65.** The Army Act does not allow the infliction of corporal punishment, but provides (s. 44, proviso (5)) that a court-martial may award for any offence committed by a soldier on active service such field punishment, other than flogging, or attachment to a fixed object, as may be directed by rules made by a Secretary of State. The rules made in pursuance of the above enactment must be referred to for further details on this subject.<sup>1</sup>

**Field punishment;**

#### ARTICLES OF WAR.

**Articles of War.**      **66.** In conclusion must be noticed the power of His Majesty, under s. 69, to make Articles of War for the better government of officers and soldiers. Such Articles may be made applicable to officers and soldiers at home or abroad, and must be judicially noticed by all judges, and in all courts. The penalty of death or penal servitude cannot be imposed by an Article of War, except for an offence expressly made liable to such punishment by the Act itself; nor can an Article of War render any offence punishable under the Act liable to be punished in a manner which does not accord with the provisions of the Act. The enumeration of offences in the Act is so complete, that the necessity for the exercise of the power of making Articles of War for the purpose of creating offences would appear unlikely to arise.

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<sup>1</sup> The rules are printed on p. 787.



## CHAPTER IV

ARREST : INVESTIGATION BY COMMANDING OFFICER :  
 SUMMARY POWER OF COMMANDING OFFICER :  
 SUMMARY AWARDS UNDER S. 47, ARMY ACT :  
 PROVOST MARSHAL : DISCIPLINE OF TROOPS WHEN  
 ATTACHED TO OR ACTING WITH NAVAL OR AIR  
 FORCES OR WHEN PASSENGERS ON BOARD HIS  
 MAJESTY'S SHIPS.

(i) *Arrest.*

1. Whenever any person subject to military law is charged with an offence, he may be taken into military custody, which means putting the offender under open arrest, or close arrest, or in confinement.<sup>1</sup>

Military custody of person charged with offence.

2. An officer is put under arrest either directly by the officer who orders it, or (more generally) by the adjutant or a field officer of a unit when the arrest is ordered by the commanding officer of that unit, and by a staff officer when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. The order may be verbal or written, the latter method as more formal being preferable, except where the offence is committed in the presence of the commanding or superior officer. On being put under arrest, an officer is deprived of his sword.

Arrest of officer.

3. The arrest may be either close or open, according to the direction of the officer who ordered it. An officer under close arrest is placed under the charge of an "escort" consisting of another officer of the same rank, if possible. The King's Regulations direct that an officer under close arrest shall not leave his quarters or tent except to take exercise under supervision; but an officer under open arrest may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the barracks or camp of his unit; he must not, however, appear out of uniform, or at mess, or at any place of amusement or public resort (such as a billiard room), nor must he wear sash, sword, belt, or spurs.<sup>2</sup> An officer placed under arrest should always be informed in writing of the nature of the arrest, which will be governed by the circumstances of the case; and any change in the nature of the arrest should be notified in writing to him. An officer may, if the circumstances of the case require it, be placed under the charge of a guard, piquet, patrol, or sentry, or, if abroad, in the custody of a provost marshal.<sup>3</sup> An officer under arrest may be ordered or permitted to attend as witness before a court-martial, or before a civil court.

Arrest may be close or open.

4. As a rule, a commanding officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. It is the duty of the commanding

Arrest usually preceded by investigation.

<sup>1</sup> A. A. 45 (1), (2). K. R., 533, 540.

<sup>2</sup> K. R. 538.

<sup>3</sup> K. R. 538 (c). See also para. 40 of this chapter.

**Ch. IV** officer to report each case of arrest without unnecessary delay to the proper superior military authority.<sup>1</sup>

Arrest of senior by order of junior officer in certain circumstances.

5. It is expressly laid down by s. 45 (3) of the Army Act, that a junior officer may order the arrest of a senior (even of a different corps or branch of the service), if engaged in any quarrel, fray, or disorder. In the case of any glaring impropriety, such as drunkenness on parade, it may become the duty of a junior to take such an extreme measure.

Case of Lt.-Col. H. in 1819.

6. This was clearly shown by the order on a court-martial for the trial of Brevet Lieut.-Col. H. at Plymouth, in 1819. Lieut.-Col. H. appeared at a regimental parade in a state of intoxication, and was put under arrest by Captain E., one of his junior officers. He was tried "for being drunk on duty when under arms inspecting the guards and piquet of the Regiment of Foot," and sentenced to be cashiered; the court observing that the occurrence of a commanding officer being put under arrest while in the actual command of a regimental parade was unprecedented in their experience; and that the circumstances detailed in evidence were not of that imperious urgency as to have called for the immediate adoption of so very strong a measure. The Prince Regent, however, in confirming the finding and sentence, took occasion to signify that he could not allow the observations of the court to go forth to the army without explaining "that the court are in error when they suppose that circumstances may not occur even upon a parade to justify a junior officer in taking upon himself the strong responsibility of placing his commander in arrest; such a measure must rest alone upon the responsibility of the officer who adopts it, and there are cases wherein the discipline and welfare of the service require that it should be assumed. In the present instance the sentence of the court appears to afford a full justification of Captain E's conduct in the placing of Lieut.-Col. H. in arrest, though it would have been more regular if that officer had continued to rest upon his own responsibility, without calling a meeting of his brother officers to support it by their opinions."

Officer has no right to claim court-martial. Release of officer.

7. Except in the circumstances mentioned in s. 47 (3) of the Army Act, an officer has no right to claim trial by court-martial.<sup>2</sup>

8. The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, except in cases of obvious error, the release is not to be ordered without the sanction of the highest authority to whom the case may have been referred.<sup>3</sup> An officer released, unless such release is specifically without prejudice to re-arrest, will not again be arrested on the same charge, unless some new and special circumstances have arisen.

No privilege of Parliament from arrest.

9. Peers and Members of the House of Commons are not privileged from arrest; but the fact and cause of the arrest should always be communicated to the Lord Chancellor, or to the Speaker, as the case may be.

<sup>1</sup> K.R. 534 (b), 538 (a). See for summary of the provisions of the Act and rules for preventing unnecessary detention in arrest, A.A. 45, and note 1 thereto.

<sup>2</sup> K.R. 538 (f).

<sup>3</sup> K.R. 538 (g).

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10. The rules which govern the close and open arrest of officers apply also to warrant officers. Non-commissioned officers will, as a rule, when charged with a serious offence, be placed under arrest forthwith ; but in case of doubt as to the commission of the offence, the arrest may be delayed ; and if the offence is not serious, it may be disposed of without previous arrest.<sup>1</sup>

Arrest of warrant and non-commissioned officers.

11. A private soldier taken into military custody on a charge of having committed an offence is placed either under close arrest or open arrest. Close arrest in the case of a private soldier means confinement under charge of a guard, piquet, patrol, sentry or provost marshal. He will not be placed under close arrest unless confinement is necessary for his safe custody or for the maintenance of discipline. For minor offences, such as absence from roll call, overstaying a pass, and other slight irregularities in quarters, soldiers are placed under open arrest. A private soldier under open arrest will not quit barracks (except on duty or with special permission) until his case has been disposed of, but he will attend parades and may be ordered to perform all duties.<sup>2</sup>

Confinement of private soldiers.

In permanent barracks soldiers under close arrest will usually be detained in a guard detention room.<sup>3</sup> They are never to be kept in irons, except when it is necessary for safe custody or to prevent violence. When troops are in billets or on the line of march, or accommodation for the confinement of offenders is otherwise not available, a soldier in military custody may be committed, by order of his commanding officer, for a period not exceeding seven days, to any civil prison or lock-up.<sup>4</sup>

While awaiting trial by court-martial or the promulgation of the finding and sentence of the court-martial which tried him, a soldier may be confined in a detention barrack, branch detention barrack, or barrack detention room. When so confined he should be kept apart from soldiers undergoing sentence.<sup>5</sup> When a soldier elects to be tried by district court-martial under s. 46 (8) of the Army Act, his commanding officer may, if he thinks the circumstances of the case warrant it, release him pending trial.<sup>6</sup> A soldier when confined can only be released by a competent authority, *e.g.*, if confined in a regimental guard room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard room by the authority of the officer commanding the garrison.

12. Except on active service, an offender, while under close arrest, is not to be required to perform any duty other than personal routine duties and such as may be necessary to relieve him from the care of any cash, stores, &c., for which he is responsible, nor is he permitted to bear arms except in an emergency by order of his commanding officer, or on the line of march, or in a detention barrack for exercise or instruction. If, however, by error, he is ordered to perform any duty, he is not thereby absolved from liability to be proceeded against for the offence for which he

Performance of duties while under close arrest.

<sup>1</sup> See para. 3 above. K.R. 534, 538, 539 (a).

<sup>2</sup> K.R. 534, 539, 540 (e). As to the duties of N.C.Os. in relation to the confinement of private soldiers, see H.K. 534 (g).

<sup>3</sup> K.R. 539 (b). As to soldiers in a state of drunkenness, see *ib.* 535.

<sup>4</sup> K.R. 539 (f). For form of order, see Form Q in App. III to R.P.

<sup>5</sup> K.R. 718, and see Form R in App. III to R.P.

<sup>6</sup> K.R. 552 (a).

**Ch. IV** is under arrest.<sup>1</sup> On board ship he may be employed on fatigue duties, although he should not be placed on guard.<sup>2</sup>

Breaking  
arrest.

**13.** The offence of escaping or attempting to escape from arrest or confinement renders an officer liable to be cashiered, and a soldier liable to imprisonment.<sup>3</sup> An offender confined to quarters, and quitting them for any purpose whatever, however short the time of his absence, is strictly speaking guilty of breaking his arrest. The gravity of the offence will depend mainly on whether the circumstances do or do not disclose deliberation, and intentional defiance of authority.

Improper  
release and  
allowing  
escape.

**14.** The offences of releasing without proper authority a person in custody, and of allowing a person in custody to escape, vary in gravity according to whether the offender acts wilfully or not ; in the former case he is liable to penal servitude.<sup>4</sup>

Receiving  
arrested  
persons  
into custody.

**15.** An officer or non-commissioned officer commanding a guard, or a provost marshal, cannot refuse to receive or keep any person committed to his custody by an officer or non-commissioned officer ; but the committing officer or non-commissioned officer must, at the time of committal, or within 24 hours after, deliver to the officer or other person into whose custody the offender is committed a written account (generally termed the "charge"), signed by himself, of the offence with which the person committed is charged. The commander of a guard will, upon the request of a person received into custody, inform him of the rank and name of the person preferring charges against him or ordering his arrest, and give to him a copy of the charge report as soon as he himself receives it.<sup>5</sup>

Account of  
offence.

**16.** The charge should contain, without any unnecessary detail, all the material points of the offence. If a charge states that the accused was drunk, or absented himself, and a witness subsequently adds before an investigating officer that the accused struck a non-commissioned officer, or used threatening language, the presumption is that the conduct of the accused was not at the time thought sufficiently serious to amount to an offence, and to be entered in the charge. As a rule, the investigating officer would treat the fresh evidence merely as showing the nature and degree of the offence originally deposed to ; but in some cases he may consider it advisable to make this new evidence the substance of a specific charge.

Omission to  
deliver  
charge.

**17.** The omission of the committing officer to deliver the charge will not justify the commander of the guard or provost marshal in refusing to receive a person into custody, much less in releasing such person. The proper course for a guard commander, in the event of such omission, is to take steps for procuring the charge, or to report to the officer to whom his guard report is furnished that no charge has been delivered. If the charge or evidence sufficient to justify the retention in custody of the person is not forthcoming within 48 hours after committal, the latter officer will order his release.<sup>6</sup>

<sup>1</sup> K.R. 540.

<sup>2</sup> Voyage Regs., 88.

<sup>3</sup> A.A. 22. As to escape, see notes 2 and 3 to that section.

<sup>4</sup> A.A. 20.

<sup>5</sup> A.A. 45 (4), and K.R. 536.

<sup>6</sup> K.R. 536.

18. It is the duty of the commander of the guard (immediately on the relief of the guard) to report in writing, to the officer to whom he is ordered to report, the name and offence of the accused, and the name and rank of the committing officer; and he should include the charge in his report or, if it has not been delivered, should state that fact. If he fails to make this report within 24 hours after the accused was committed, or where he is relieved from his guard within that period, then immediately on being so relieved, he himself commits an offence. The report will, as a rule, be made to his commanding officer.<sup>1</sup>

Ch. IV  
Duty of commander of guard to report name and offence of accused.

(ii) *Investigation by Commanding Officer.*

19. The object of the report referred to in para. 18 is to enable the commanding officer of the accused, without delay, to institute an investigation of the case. There is some difference in the procedure in the case of an officer and in that of a soldier.

Investigation by commanding officer.

20. The case of an officer may be referred to a court of inquiry, and need not, unless the officer requires it, be formally investigated before his commanding officer<sup>2</sup>; but the commanding officer, in the case of an officer as well as of a soldier, is by s. 46 of the Army Act made responsible for dismissing the charge, if it ought not to be proceeded with; and, if it ought to be proceeded with, for taking the proper steps under that section.

In case of officer.

21. A case of a warrant officer, non-commissioned officer or private soldier should, in the first instance, be investigated by the company, &c., commander. Where the accused is a private, this officer, if he decides that the case is a minor offence or a case of drunkenness, or of absence without leave, with which he can deal under the powers delegated to him under s. 46 (9) of the Army Act and the King's Regulations,<sup>3</sup> will either dispose of the case himself or leave it to his commanding officer to deal with. The case of a non-commissioned officer must always be left to be dealt with by the commanding officer, except where the company, &c., commander has power to admonish or reprimand (but not severely reprimand) a non-commissioned officer not above the rank of corporal.<sup>4</sup> A case left to be dealt with by a commanding officer must be investigated by the commanding officer himself. He can dismiss the charge; remand the case for trial by court-martial; refer it to superior military authority; or, in the case of a private soldier, award punishment summarily, subject to the right of the soldier, in any case where the award or finding involves forfeiture of pay, and in any other case where the commanding officer proposes to deal with the offence otherwise than by awarding a minor punishment, to elect to be tried by a district court-martial, and subject to the limitations imposed on the discretion of commanding officers by the King's Regulations.<sup>5</sup> A warrant officer cannot be summarily punished except as provided for in s. 47 of the Army Act (see (iv) below). A non-commissioned

In case of soldier.

<sup>1</sup> A.A. 21 (3). and K.R. 586. See for summary of the provisions of the Act, and rules for preventing unnecessary prolongation of confinement, A.A. 45 and note.

<sup>2</sup> R.P. 8 and note.

<sup>3</sup> K.R. 542, 565.

<sup>4</sup> K.R. 542 and 565.

<sup>5</sup> A.A. 46; R.P. 4, 7; K.R., 542-553. paras. 24 and 26, below.

**Ch. IV** officer, though not legally exempt, is not allowed by the King's Regulations to be summarily punished except as specially laid down therein. A person subject to military law as a soldier but not belonging to His Majesty's forces cannot be summarily punished.<sup>1</sup>

Duty of officer conducting investigation.

**22.** The duty of investigation requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation usually takes place in the morning, and must be conducted in the presence of the accused;<sup>2</sup> but, in the case of drunkenness, an offender should never be brought up till he is sober.<sup>3</sup>

Examination of witnesses.

**23.** After the nature of the offence charged has been made known to the accused, the witnesses present on the spot who depose to the facts for which he has been placed under arrest are examined. In every case where the commanding officer has power to deal with the case summarily, the accused has a right to demand that the witnesses against him be sworn; and he will also have full liberty of cross-examination.<sup>4</sup>

Decision of commanding officer.

**24.** The commanding officer, after hearing what is urged against the accused, will, if he is of opinion that no military offence at all, or no offence requiring notice, has been made out, at once dismiss the charge.<sup>5</sup> Otherwise, he must ask the accused what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence, including the evidence of the accused himself and that of his wife.<sup>6</sup> The commanding officer will then consider whether to dismiss the case or to deal summarily with it himself, or to adjourn it for the purpose of having the evidence reduced to writing, with a view to having the case tried by court-martial or, when the accused is an officer below the rank of field officer or is a warrant officer, disposed of under s. 47 of the Army Act.<sup>7</sup> First and less serious offences of the class which he has authority under the King's Regulations to dispose of summarily, without reference to superior authority, should, as a rule, be so dealt with, subject to the soldier's right to elect before the award to be tried by a district court-martial. If the offence does not belong to the above class, and the commanding officer desires to dispose of it summarily, he must refer to superior authority by letter stating briefly the circumstances, and accompanied by the conduct sheets of the accused. A charge for any offence, of whatever class, may, if the commanding officer thinks fit, be referred to superior authority, with an application for a district court-martial.<sup>8</sup>

Caution as to expressing opinion.

**25.** During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the guilt of the accused, or one which might

<sup>1</sup> A.A. 182 (1), 184 (2); K.R., 558, 559; and as to summary punishments, see below, para. 31, *et seq.*

<sup>2</sup> R.P. 3 (A).

<sup>3</sup> See K.R. 535 (e), which suggests the lapse of 24 hours before he is brought up.

<sup>4</sup> A.A. 46 (6); R.P. 3 (A), (B) and note; *q.s.* also as to the evidence of the accused himself, and of his wife.

<sup>5</sup> R.P. 4 (A).

<sup>6</sup> R.P. 3 (A) and note.

<sup>7</sup> R.P. 4 (B).

<sup>8</sup> R.P. 4; K.R., 547-550.

prejudice him at a subsequent trial.<sup>1</sup> It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgment beforehand. Conduct sheets should be examined by the commanding officer when, and not before, he has satisfied himself as to the guilt of the accused.

26. If the commanding officer proposes to deal with the case summarily, otherwise than by awarding a minor punishment, he must ask the soldier whether he desires to be dealt with summarily, or to be tried by a district court-martial; and the soldier may, if he chooses, thereupon elect to be tried by a district court-martial. Save as aforesaid, a soldier has no right to claim a court-martial, except that, where the commanding officer has omitted to put the proper question to him, the soldier has a subsequent opportunity of making the claim.<sup>2</sup>

Right of soldier to claim court-martial.

As stated above, a commanding officer has power to award minor punishments without restriction, but should it happen, for example, in a case of absence without leave in excess of six hours, that a commanding officer proposes to deal with the offence by awarding a minor punishment, it will result that the decision constitutes a finding of "guilty" in respect of the offence with resultant forfeiture of pay. Consequently in such case, before final disposal, the soldier must be afforded an opportunity of electing trial by district court-martial. The principle does not apply in the case of deprivation by a commanding officer of acting or lance rank, since, although the deprivation might result in a reduction in the rate of pay, the loss would not amount to a forfeiture of pay within the meaning of s. 138 of the Army Act.

27. Where a commanding officer adjourns the case for the purpose of having the evidence reduced to writing, the evidence given by any witnesses before him must be taken down in writing in the presence of the accused;<sup>3</sup> the accused must be allowed to cross-examine within reasonable limits, especially if there is any variance between the evidence as taken down and that given on the prior investigation. When all the evidence for the prosecution has been taken, the accused, before he makes any statement, must be formally cautioned in the prescribed words. This is most important, for any statement made by him *at the taking of the summary* will be inadmissible at his trial unless he has first been duly cautioned. Any statement or evidence of the accused will be taken down, but he will not be cross-examined upon it.<sup>4</sup>

Adjournment for taking a summary of evidence.

28. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him.<sup>5</sup> If the commanding officer so directs, or if the accused so demands, the evidence will be taken on oath.<sup>6</sup> Great care is necessary in the performance of this duty; the words used by the witness

Mode of taking summary.

<sup>1</sup> K.R., 542 (a).

<sup>2</sup> A.A. 46 (B); R.P. 7; see also K.R. 566 and para. 21 above.

<sup>3</sup> The accused and his wife, even if they have given evidence before the commanding officer, cannot be compelled to repeat their evidence.

<sup>4</sup> R.P. 4 (E).

<sup>5</sup> R.P. 4 (C).

<sup>6</sup> A.A. 70 (G), and R.P. 4 (F).

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or accused should as nearly as possible be taken down, and the summary should be free from any expression of opinion or conjectures, and from matter not bearing on the case. The difference not infrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced to the hasty or careless preparation of the summary, rather than to any prevarication or desire to mislead on the part of the witnesses.

Remand of  
accused for  
trial by  
court-  
martial:

29. When the summary of evidence has been taken, the commanding officer must consider it and determine whether or not to remand the accused for trial by court-martial. It may be that on reading the evidence the commanding officer will come to the conclusion that the case is one which ought to be disposed of summarily. In such a case, unless the accused has himself elected to be tried by district court-martial, the commanding officer will either rehear the case and dispose of it summarily, or, if he is not competent to do so without leave from superior military authority, will refer it to the proper authority. In any other case he will remand the accused for trial by court-martial,<sup>1</sup> and send to superior authority an application for a district or general court-martial<sup>2</sup> accompanied by the summary of evidence, the charges on which he proposes the accused person should be tried, and other documents; and in his letter of application he will state his reasons for desiring the particular description of court for which he applies. If a court-martial is ordered or applied for, the accused can be kept in arrest or confinement until the charge is disposed of. It is the duty of the commanding officer on reading the summary of evidence to note whether or not the evidence taken down in the summary corresponds with the evidence given at the inquiry before him.

At home stations, in all cases of fraud and indecency, the charge and summary of evidence must be submitted to the Judge-Advocate-General before trial is ordered.<sup>3</sup>

Use of  
summary  
of evidence.

30. The summary of evidence, like the depositions before justices, may be used for certain limited purposes at the trial,<sup>4</sup> and also for the purpose of giving the accused notice of the charge he will have to meet, and the convening officer and president of the court notice of the case to be tried. Either the summary itself or a true copy must be laid before the court-martial before whom the accused is tried.

(iii) *Summary power of Commanding Officer.*

Power of  
command-  
ing officer  
to deal  
with non-  
commis-  
sioned  
officer or  
soldier.

31. The power of the commanding officer to punish summarily a soldier is twofold: first, the power under s. 46 (2) (a)-(d), Army Act, to award detention, deduction from ordinary pay, and in the case of drunkenness a fine not exceeding two pounds, and, in case of offences committed on active service, field punishment and forfeiture of pay for not more than 28 days<sup>5</sup>; and, secondly,

<sup>1</sup> R. P. 5 (A).

<sup>2</sup> R. P. 5 (B).

<sup>3</sup> K. R. 630.

<sup>4</sup> R. P. 17 (F) and note 6.

<sup>5</sup> A. 46, 138; K. R. 56: (a), 579.



the power under s. 46 (2) (e), Army Act, and the King's Regulations to award the minor punishments of confinement to barracks, extra guards or piquets, or admonition, subject and according to the provisions of para. 560 (b), King's Regulations, to which reference must be made. The detention must in no case exceed twenty-eight days.<sup>1</sup> Under the terms of the Army Act (s. 46 (2) (d)) a non-commissioned officer cannot be awarded field punishment or forfeiture of pay by his commanding officer, and under the King's Regulations he is not to be subjected to summary or minor punishments by his commanding officer, save the summary punishment of deduction from pay under s. 138 (4) of the Army Act (subject to the right to claim trial by court-martial), and the minor punishments of severe reprimand, reprimand or admonition. A non-commissioned officer may be ordered to revert from an acting or lance rank to his permanent grade,<sup>2</sup> or may be removed from an appointment and reverted to his permanent grade, but this power of removal, if the non-commissioned officer's permanent rank is higher than that of corporal, is not to be exercised without reference to superior authority.<sup>3</sup> A commanding officer has no power to punish an officer or warrant officer.

**32.** Drunkenness and absence without leave are the two offences which require to be most frequently dealt with by the commanding officer; indeed, the case of drunkenness of a soldier, apart from exceptional cases, as described in Chapter III, *must* be so dealt with.<sup>4</sup> This obligation does not apply to a non-commissioned officer charged with drunkenness.<sup>5</sup> Drunken-  
ness.

**33.** In dealing summarily with cases of absence without leave, the commanding officer will have regard to the place of the soldier's surrender or apprehension and all the circumstances of the case. If the period of absence does not amount to six hours or upwards no pay is forfeited, except when the absence prevents the absentee from fulfilling some military duty which was thereby thrown on some other person, in which case the absentee will forfeit a day's pay no matter how short his absence might be. If the period of absence amounts to six hours, reckoned consecutively, but not to twenty-four hours, one day's pay is forfeited. If the period of absence exceeds twenty-four hours, the number of days' pay forfeited would be the period in hours divided by twenty-four, any fraction over being counted as an additional day.<sup>6</sup> Absence  
without  
leave.

**34.** Under s. 138 of the Army Act a soldier may be ordered to forfeit all pay for every day of absence either on desertion, or without leave or as a prisoner of war; also for every day of penal servitude, imprisonment, detention, or field punishment, under sentence, or in custody under any charge resulting in conviction by a court-martial or civil court, or under a charge of absence without leave resulting in an award of detention or field punishment by his commanding officer; also for every day in hospital on account of sickness, certified to have been caused by Forfeiture  
of pay.

<sup>1</sup> A.A. 46 (2) (a); R.P. 6, and note.

<sup>2</sup> K.R., 559.

<sup>3</sup> A.A. 183 proviso (c); K.R., 273.

<sup>4</sup> See Ch. III, para. 44.

<sup>5</sup> A.A. 183 (1).

<sup>6</sup> A.A. 140 (2), and note 4 to s. 138; P.W. 880, 881; K.R. 566, 567. As to notifying in regimental orders the names of men absent without leave, see K.R. 583.

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an offence committed by him. The Pay Warrant orders the forfeiture of pay to be made in the above cases with the following exceptions:—(a) a soldier does not forfeit pay while under sentence of field punishment except for the days during which he is in custody, unless there has been an award of forfeiture of pay in addition to the sentence of field punishment<sup>1</sup>; (b) pay is forfeited for the period of arrest before conviction only if the soldier is in custody under close arrest (including hospital), or is confined in a civil prison or police cell; (c) a soldier is allowed pay while a prisoner of war unless a court of inquiry finds that he was taken prisoner through his own fault or misconduct.<sup>2</sup> In the case of absence without leave, as the pay is forfeited automatically, the officer dealing with the case should make no award, but only inform the soldier of the number of days' pay forfeited.<sup>3</sup>

The commanding officer may, where a soldier is not tried by court-martial, order stoppage of his pay to make compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, equipment, regimental necessaries, and so forth, or by his injuring any buildings or property<sup>4</sup>; and may likewise order the stoppage of the amount of any fine awarded by himself.<sup>5</sup>

35. There is no appeal from the award of the commanding officer, but, as has been already mentioned, the soldier may, in certain cases, instead of submitting to the jurisdiction of his commanding officer, elect to be tried by a district court-martial.<sup>6</sup>

36. When once an offender has been punished or the charge otherwise disposed of by his commanding officer he cannot be tried by a court-martial for the same offence; and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage of pay for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court.<sup>7</sup> When a commanding officer has once awarded punishment for an offence, he cannot afterwards increase it.<sup>8</sup> It is considered that his award is complete when the man has left his presence.

37. A commanding officer may (subject to certain limitations) delegate to company, &c., commanders the power of awarding fines for drunkenness and certain minor punishments for any offences which he himself may deal with.<sup>9</sup>

38. The commanding officer of a detachment, if of field rank, has, unless restricted by superior authority, the same power of awarding summary punishment as the commanding officer of a corps.<sup>10</sup>

Right of  
soldier to  
demand  
district  
court-  
martial.

No trial  
after pun-  
ishment by  
command-  
ing officer.

Delegation  
of power by  
command-  
ing officer.

Command-  
ing officer  
of detach-  
ment.

<sup>1</sup> A.A. 138, note 9.

<sup>2</sup> P.W. 879 (c), 885, and K.R. 743.

<sup>3</sup> K.R., 566 (a).

<sup>4</sup> A.A. 138 (4).

<sup>5</sup> A.A. 138 (7).

<sup>6</sup> A.A. 46 (8); para. 26, above.

<sup>7</sup> A.A. 46 (7).

<sup>8</sup> R.P. 6 (B). As to the power to cancel an award, or reduce the punishment, see R.P. 10.

<sup>9</sup> A.A. 46 (9); K.R., 542 (d), 565.

<sup>10</sup> K.R., 526, 563, and see 564.

(iv) *Summary awards under s. 47, Army Act.*<sup>1</sup>

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39. Officers below the rank of field officer, and warrant officers, may be summarily dealt with by the authorities specified in s. 47 of the Army Act.

Summary awards in the case of certain officers, and of warrant officers.

Such officers may be subjected to one or more of the following punishments—*forfeiture of seniority of rank, forfeiture of service for promotion (in the case of those whose promotion depends upon length of service)<sup>2</sup> and severe reprimand or reprimand.*

Warrant officers may be subjected to one or more of the following punishments—*forfeiture of seniority of rank, severe reprimand or reprimand, or a deduction authorised by the Army Act to be made from ordinary pay.*

In proceedings under this section the specified authority may dismiss the charge with or without hearing the evidence; if he thinks that it ought to be proceeded with and decides not to send it for trial by court-martial, he will hear the evidence given orally unless the accused consents in writing to the mere reading of the summary or abstract of evidence.

The accused has a right to elect trial by court-martial if the specified authority proposes to award a sentence other than severe reprimand or reprimand; he has also a right to demand that the evidence be taken on oath.

Dismissal of a charge under this section is a bar to trial by court-martial.<sup>3</sup>

Certain offences should not be dealt with under this section of the Army Act. The only offences which should be so dealt with are those specified in K.R. 546.

(v) *Provost Marshal.*

40. In the case of offences committed abroad, whether on active service or not, arrests will often be made by the provost marshal or his assistants, who may be appointed by a general officer commanding a body of forces abroad. A provost marshal cannot, as was formerly the case, inflict any punishment on his own authority.<sup>4</sup> He can only arrest and detain for trial persons subject to military law committing offences, and carry into execution punishments to be inflicted in pursuance of a court-martial. A provost marshal and his assistants have also as respects a soldier in his or their custody undergoing field punishment, the same powers as the governor of a military prison.<sup>5</sup>

Provost marshal.

Section 74 of the Army Act permits of the appointment of a provost marshal and assistant provost marshals by general officers commanding bodies of forces serving abroad. The provost

<sup>1</sup> See also R.P. 9.

<sup>2</sup> See K.R. 558.

<sup>3</sup> R.P. 36 (A) (i).

<sup>4</sup> The provost marshal was, until 1829, appointed by the general, and exercised his powers without any statutory authority, and the appointment could only be justified legally as being made under the Sovereign's prerogative to govern the army in time of war in places out of his dominions. There must have been considerable doubt as to the existence of the power, and consequently as to the legality of the provost marshal's acts, and a correspondence took place between the Duke of Wellington and the Government on the subject during the Peninsular War. (See Clode, *Mil. Forces*, ii. p. 662.) In 1829 the Article of War respecting the provost marshal was inserted, and gave legal recognition and—if it was within the powers of the Articles—legal sanction to the appointment and powers of the provost marshal. (See Clode, *Military and Martial Law*, pp. 181-3.) The above powers were curtailed in 1879 by the Act of that year.

<sup>5</sup> A.A. 74. As to garrison and regimental provost-serjeants, see K.R. 729, 731, 732.

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marshal will always be a commissioned officer : his assistants may be either officers or non-commissioned officers. At home, a provost marshal (who is also commandant of the Corps of Military Police) and assistant provost marshals are appointed by the King. During manœuvres officers are detailed to act as assistant provost marshals with divisions in order that they may acquire a knowledge of their duties. On mobilization, a provost marshal and such assistant provost marshals as may be necessary are appointed.

(vi) *Discipline of troops when attached to or acting with H.M.'s naval or air forces, or when passengers on board H.M.'s ships.*

Discipline of  
officers and  
soldiers  
attached to  
the air  
force.

41. Officers and soldiers temporarily attached to the air force under regulations made by the Army Council and Air Council pursuant to s. 179A of the Army Act and s. 179A of the Air Force Act are, with certain modifications, made subject to the Air Force Act whilst so attached.<sup>1</sup> Conversely, officers and airmen of the regular air force temporarily attached to a military force, are, with certain modifications, subject to the Army Act whilst so attached.<sup>2</sup> The regulations relating to attachments are set out at pp. 810-813.

Relations  
between  
military  
and naval  
and air  
forces  
acting  
together.

42. When bodies of the navy and army are acting together or attached, or when bodies of the army and air force are acting together, under conditions prescribed by regulations made by the Admiralty and Army Council or by the Army Council and Air Council respectively, the officers and petty officers of the naval contingent, or the officers and non-commissioned officers of the air force, as the case may be, have the same powers of command and discipline (other than powers of punishment) over military officers and men as they would have if they, themselves, were military officers and non-commissioned officers of ranks corresponding to their own. Conversely, military officers and non-commissioned officers have similar powers over air-force personnel, and military officers and non-commissioned officers not below the rank of serjeant have similar powers over naval personnel.<sup>3</sup> The purpose of the regulations is the mutual exercise of the powers of command and discipline without subjection to the law of the force with which the naval, military or air forces may be acting, but, on active service only, air-force personnel acting with the military forces may be made subject to military law as though they were attached to the army, and, similarly, military personnel acting with the air force may be made subject to air force law as though they were attached to the last-named force.<sup>4</sup>

The "prescribed conditions" at present in force are set out at pp. 809-810, and 813-817.

Discipline  
on board  
H.M.'s  
ships.

43. The discipline of troops embarked as passengers on board any of His Majesty's ships is regulated by Orders in Council made under the Naval Discipline Act.<sup>5</sup>

<sup>1</sup> A.F.A. 175 (1A) and 176 (1A).

<sup>2</sup> A.A. 175 (1A) and 176 (1A).

<sup>3</sup> Naval Discipline Act, 90A; A.A. 184A; A.F.A. 184A.

<sup>4</sup> See proviso to A.A. and A.F.A. 184A (1A).

<sup>5</sup> See A.A. 186, and the Orders in Council printed at pp. 818-824.

## CHAPTER V

## COURTS-MARTIAL

(i) *Descriptions of Courts-Martial and how convened.*

1. A person subject to military law<sup>1</sup> who is to be tried by court-martial may be brought before a district court-martial or a general court-martial. Description of courts-martial.

In certain circumstances trial may be by field general court-martial.<sup>2</sup>

2. The difference between a district and a general court-martial consists mainly in their composition and in the extent of punishment which each tribunal can award. A district court-martial cannot try officers,<sup>3</sup> or persons subject to military law as officers.<sup>4</sup> Distinction between district and general courts-martial.

3. Every court-martial depends for its jurisdiction upon the order which calls it into being, namely, the convening order issued by a person authorised under the Army Act to convene it. Order convening the court.

4. A district court-martial may be convened by an officer authorised to convene a general court-martial or by an officer who has received from such officer a warrant authorising him to convene district courts-martial.<sup>5</sup> Convening of district court-martial.

5. A general court-martial can be convened by His Majesty or by an officer authorised by His Majesty to convene such courts, or by an officer holding a warrant to convene such courts from some officer authorised to delegate the power of convening them.<sup>6</sup> Convening of general court-martial.

6. At home, warrants giving officers power to convene general courts-martial are usually issued by the King to the general officers commanding-in-chief a command, to the general officers commanding the London and Northern Ireland districts and to the general officers commanding in Guernsey and Jersey. Warrants to convene at home.

7. A warrant giving power to convene and to confirm the findings and sentences of general courts-martial is usually issued, in India, to the commander-in-chief in India, and, elsewhere out of the United Kingdom, to the general officer commanding, either in the colonies or on active service. Governors of colonies have in certain cases been granted such warrants.<sup>7</sup> Warrants to convene abroad.

8. Any such warrant, and also any warrant of delegation given by the officer so authorised, may contain any reservations or special provisions, and may be addressed to an officer by name or by the designation of his office; and may give authority to a person performing the duties of an office named or to the successors in command of an officer; and may be wholly or partly revoked by a fresh warrant.<sup>8</sup> Form of warrant.

<sup>1</sup> A.A. 175, 176. See also Introductory Observations to A.A. Part V.

<sup>2</sup> As to field general courts-martial, see below, para. 111.

<sup>3</sup> A.A. 4H (8).

<sup>4</sup> A.A. 175.

<sup>5</sup> A.A. 48 (2), 123.

<sup>6</sup> A.A. 48 (1), 123.

<sup>7</sup> See notes to A.A. 123.

<sup>8</sup> A.A. 123 (8) (4), 123 (9) (4). For forms of warrants see pp. 768-763.

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Convening  
court-  
martial  
for trial  
of marine.

9. A general court-martial for the trial of an officer or man in the Royal Marines can only be convened by an officer duly authorised by a warrant from the Admiralty, except in certain cases where such officer or man is serving beyond the seas. A district court-martial for the trial of a man in the Royal Marines can be convened by an officer who has authority to convene a district court-martial for the trial of a soldier of any other portion of the regular forces.<sup>1</sup>

(ii) *Jurisdiction.*

Jurisdiction  
of district  
court-  
martial.

10. A district court-martial cannot try an officer or a person subject to military law as an officer.<sup>2</sup> It can try a warrant officer, but its powers of punishing him are limited.<sup>3</sup> It has complete jurisdiction to try any military offence (except such as can only be committed by an officer), and, subject to certain restrictions in the case of treason, murder, manslaughter, treason-felony and rape, any offence which, if committed in England, is punishable by the law of England, *i.e.*, a civil offence.<sup>4</sup>

A district court-martial cannot award a sentence higher than two years' imprisonment, with or without hard labour<sup>5</sup>; it cannot therefore try a case of murder, where the only punishment which can be awarded is death.<sup>6</sup>

Jurisdiction  
of general  
court-  
martial.

11. A general court-martial can try any person who is subject to military law whether as an officer or as a soldier. It has complete jurisdiction to try any military or civil offence though the same restrictions are placed by s. 41 of the Army Act upon its powers to try cases of treason, murder, manslaughter, treason-felony and rape as are imposed upon a district court-martial.

A general court-martial can award the punishments of death and penalservitude as well as such punishments as a district court martial can award.

Trial of  
persons no  
longer  
subject to  
military  
law.

12. A court-martial has jurisdiction to try and punish a person who, since the time at which an offence is alleged to have been committed by him, has ceased to be subject to military law; but, except in the case of mutiny, desertion or fraudulent enlistment he can only be tried within three months after he has ceased to be so subject; the three months in question will not be deemed to have expired if the trial has commenced within that period.<sup>7</sup>

Reservists,  
&c.

Reservists and members of the Territorial Army can, in the case of certain offences, be tried within two months after their apprehension.<sup>8</sup>

No power  
to try  
persons  
already  
convicted,  
acquitted,  
&c.

13. A court-martial cannot try or punish a person for any offence of which he has been already acquitted or convicted by a court-martial<sup>9</sup> or by a competent civil court;<sup>10</sup> or where the charge against him has been dismissed or the offence dealt with summarily by his commanding officer<sup>11</sup>; or where a charge against an officer

<sup>1</sup> A.A. 179 (1) (2).

<sup>2</sup> A.A. 48 (6).

<sup>3</sup> A.A. 182.

<sup>4</sup> A.A. 41.

<sup>5</sup> A.A. 48 (6).

<sup>6</sup> A.A. 41 (2).

<sup>7</sup> A.A. 158 (1).

<sup>8</sup> Reserve Forces Act, 1882, s. 26; T.R.F. Act, 1907, s. 25 (2). See T.A. Regs. 311-322.

<sup>9</sup> A.A. 157; R.P. 36 (A) (i).

<sup>10</sup> A.A. 182 (6); R.P. 36 (A) (i).

<sup>11</sup> A.A. 46 (7); R.P. 36 (A) (i).

below field rank or a warrant officer has been dismissed or the offence dealt with summarily by the authority authorised for the purpose under s. 47 of the Army Act.<sup>1</sup>

This prohibition does not apply where there has been no valid trial resulting in an acquittal or conviction, or, in the case of a conviction by court-martial, where the finding and sentence have not been confirmed.<sup>2</sup>

Pardon or condonation by competent military authority, if held to be proved, will operate to prevent a person from being tried by court-martial.<sup>3</sup>

14. An offence, other than mutiny, desertion or fraudulent enlistment, cannot be tried by court-martial if three years have elapsed since the date of its commission<sup>4</sup> but, as stated in para. 12, a partial exception from this is made in the case of reservists and members of the Territorial Army.

Time limit for trial.

In certain cases a soldier cannot be tried even for desertion (other than desertion on active service) or for fraudulent enlistment, if three years have elapsed from the date of the commission of the offence.<sup>5</sup>

In trying a civil offence a court-martial is bound in relation to the commencement of its proceedings by any time-limit prescribed by law in respect of that offence which is less than three years.<sup>6</sup>

15. An offence, wherever committed, may be tried and punished at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial and in which the alleged offender may be for the time being, and the trial will take place as if the offender were under the command of such officer.<sup>7</sup>

Place of trial.

Offences committed on board ship can be tried on board before reaching the port of disembarkation, as if committed on land at the place where the offender embarked.<sup>8</sup>

Trial on board ship.

Offenders are not to be sent home from stations abroad with charges pending against them, except in cases of necessity. But for the sake of convenience a person charged may be removed for trial from the place where he is serving, so long as he is not prejudiced in his defence by the change.<sup>9</sup>

Removal of offender for trial.

### (iii) Composition.

16. A district court-martial must be composed of at least three officers, each of whom must have held a commission for not less than two years<sup>10</sup> and must be subject to military law.<sup>11</sup>

Composition of district court-martial.

The members of the court must, so far as is practicable, belong to different corps, and can only belong to the same regiment of

<sup>1</sup> A.A. 47 (5); R.P. 36 (A) (i).

<sup>2</sup> R.P. 36 (B); A.A. 53 (4), 54 (6).

<sup>3</sup> R.P. 36 (A) (ii).

<sup>4</sup> A.A. 181; R.P. 36 (A) (iii).

<sup>5</sup> A.A. 181.

<sup>6</sup> R.P. 36 (A) (iii).

<sup>7</sup> A.A. 159, 160.

<sup>8</sup> A.A. 159. As to discipline of troops on board H.M.'s ships, see Ch. IV, para. 43.

<sup>9</sup> K.R. 633, 636.

<sup>10</sup> A.A. 48 (4); see also R.P. 18 and notes; for number of members to be detailed in ordinary or complicated cases and as to waiting members, see K.R. 643.

<sup>11</sup> See, however, A.A. 48 (10) under which Air Force officers may in some circumstances serve as members of courts-martial.

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cavalry, or brigade of artillery, or battalion of infantry if, in the opinion of the convening officer (which must be inserted in the convening order), other officers are not available.<sup>1</sup>

The president (who must be named in the convening order)<sup>2</sup> should not be below the rank of field officer; but a captain may preside if a field officer is not available, or a subaltern may preside if neither field officer nor captain is available and if the accused is not a warrant officer.<sup>3</sup> The opinion of the convening officer as to the non-availability of a field officer or captain must be inserted in the convening order.

The members of the court (other than the president) may be mentioned by name in the convening order, or their rank and the unit to which they belong may alone be stated.<sup>4</sup>

Where, as will normally be the case, a district court-martial is composed of three officers, not more than one member should be a subaltern.<sup>5</sup>

Composition  
of general  
courts-  
martial.

17. The provisions as to the composition of a district court-martial referred to in the preceding paragraph apply also to a general court-martial except that (i) the legal minimum of members required to serve on a general court-martial is five instead of three<sup>6</sup>; (ii) the members must have held a commission for three instead of two years<sup>7</sup>; (iii) the president should always be a general officer or colonel (if available)<sup>8</sup>; (iv) a subaltern cannot in any circumstances act as president.<sup>9</sup>

In addition, four of the members must be of a rank not below that of captain<sup>10</sup>; an officer below that rank cannot be a member of the court for the trial of a field officer<sup>11</sup>; and no officer junior in rank to an accused officer can serve as a member if officers of equal or superior rank are available.<sup>11</sup>

For the trial of a commanding officer of a unit, as many members as possible must hold or have held commands equivalent to that held by the accused.<sup>12</sup>

Trial of  
members of  
reserve or  
auxiliary  
forces.

18. In the case of the trial by court-martial of an offender belonging to the reserve or auxiliary forces, one member of the court must, if practicable, belong to the same branch of those forces as that to which the accused belongs.<sup>13</sup>

Disquali-  
fications  
of officers.

19. Officers who are eligible through the length of their commissioned service to act as members of courts-martial<sup>14</sup> may nevertheless be disqualified from serving on a particular court-martial. The following persons are disqualified in the case of a district or general court-martial: (i) the convening officer; (ii) the prosecutor; (iii) a witness for the prosecution; (iv) the commanding officer of the accused or the officer who investigated the

<sup>1</sup> R.P. 20 (A) and note.

<sup>2</sup> A.A. 48 (9); K.R. 644.

<sup>3</sup> A.A. 48 (9), 182 (4); K.R. 635.

<sup>4</sup> K.R. 644.

<sup>5</sup> K.R. 643.

<sup>6</sup> A.A. 48 (8).

<sup>7</sup> A.A. 48 (9); K.R. 642.

<sup>8</sup> A.A. 48 (9).

<sup>9</sup> A.A. 48 (3); R.P. 21 (A).

<sup>10</sup> A.A. 48 (7); R.P. 21 (B).

<sup>11</sup> R.P. 21 (B).

<sup>12</sup> K.R. 642 (b).

<sup>13</sup> R.P. 20 (B) and note. See Ch. XI, para. 65.

<sup>14</sup> See paras. 16 and 17 above.



charges before trial or took down the summary of evidence ; (v) the company, &c., commander who made preliminary enquiry into the case ; (vi) an officer who was a member of a court of inquiry into the matters on which charges against the accused are founded ; (vii) where the accused has been previously tried for the same offence, but the proceedings have not been confirmed, any officer who was a member of the court-martial by which the offence was tried ; (viii) an officer who has a personal interest in the case.<sup>1</sup>

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(iv) *Duties of convening officer.*

20. An application for a court-martial should usually be disposed of at once ; but if the convening officer detects matter showing culpable neglect or improper conduct on the part of the superiors of the accused, he may delay assembling a court for the purpose of making enquiry.

Consideration of proposed charges and evidence.

Before acceding to an application for a court-martial submitted by a commanding officer the convening officer must consider the nature of the case, the statutory provisions and regulations applicable to it and, subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge submitted by the commanding officer discloses an offence under the Army Act and is properly framed in accordance with the Rules of Procedure and King's Regulations. He must also be satisfied that evidence sufficient to justify trial is disclosed in the summary or abstract of evidence which accompanied the commanding officer's application ; if he thinks that it does not, he should order the accused to be released ; if he is in doubt it is within his discretion to order the release of the accused or to refer the matter to superior authority.<sup>2</sup> In any case he may direct the commanding officer to alter the form of the proposed charge in view of the evidence submitted ; he may give directions that further evidence should be obtained ; in a suitable case he may direct that the accused should be released without prejudice to his re-arrest when further evidence is forthcoming.<sup>3</sup>

When an accused person is to be arraigned on a serious charge, other charges in respect of minor offences may be dropped.<sup>4</sup>

If the convening officer considers that a case should be disposed of summarily instead of by court-martial, and it can legally be so disposed of, he should take steps to effect this.

At home stations, in all cases of fraud and indecency the charge and summary of evidence are to be submitted to the Judge-Advocate-General before trial is ordered.<sup>5</sup>

21. If the convening officer is of opinion that the case should be tried by court-martial, he will, if the terms of the warrant granted to him permit, convene either a district or a general court-martial ; if he holds no warrant to convene a general court-martial, he will refer the case to proper superior authority holding such warrant.

Decision to try by court-martial.

<sup>1</sup> A.A. 50 (2) (3), and notes ; R.P. 19 (B) and notes.

<sup>2</sup> R.P. 17 (A) ; K.R. 631.

<sup>3</sup> K.R. 551.

<sup>4</sup> K.R. 632.

<sup>5</sup> K.R. 630.

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Type of  
court-  
martial to be  
convened.

22. In forming his decision as to whether the case shall be tried by district or general court-martial (where the circumstances permit trial by either one or the other of these tribunals) the convening officer will have regard to various considerations, including the prevalence of the particular offence charged, the general state of discipline in the corps or district, the character of the accused and, in some cases, the sentence which the court ought to be in a position to award if the facts alleged should be proved.

The powers of district courts-martial are sufficient to deal with all ordinary offences committed by non-commissioned officers and soldiers. In the case of aggravated offences, however, a general court-martial may properly be convened.<sup>1</sup>

A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted. At the same time there may be cases where disgraceful charges have been preferred and where a court-martial affords the only means to the accused of clearing his character.

Order for  
trial by  
court-  
martial;

23. The convening officer having settled or approved the charges on which the accused is to be tried, will insert upon the charge-sheet an order that they are to be tried by the description of court-martial which he has decided to convene. It is within his power to direct charges to be inserted in different charge-sheets upon each of which the accused will be separately tried as far as and including the finding<sup>2</sup>; if there are separate charge-sheets the convening officer may direct that upon conviction upon any one of them the accused need not be tried upon the others.<sup>3</sup>

Every charge-sheet must be signed by the commanding officer of the accused and bear upon the face of it the convening officer's directions for trial.<sup>4</sup>

(v) *Preparation of Defence by accused.*

Full  
information  
to be given  
to accused.

24. As soon as practicable after an accused has been remanded for trial by court-martial, and at least twenty-four hours before he is brought up for trial, an officer must give to him a copy of the summary, or (if he is an officer, and there is no summary of evidence) the abstract, of evidence, and apprise him of his rights in connection with the preparation of his defence.<sup>5</sup>

As soon as trial has been ordered, proper opportunity to prepare his defence must be afforded to the accused, who must be permitted to have free communication with any witnesses whom he may desire to call, and with any 'friend,' defending officer or legal adviser whom he may wish to consult if they are available.<sup>6</sup>

As soon as practicable, and at least twenty-four hours before the accused is arraigned for trial, an officer must hand to him a copy of the charge-sheet, and, if necessary, explain the charge-sheet and charges to him. The officer in question must also inform him of his rights in connection with the securing of witnesses on his behalf.<sup>7</sup>

<sup>1</sup> K.R. 634.

<sup>2</sup> R.P. 62 (A).

<sup>3</sup> R.P. 62 (D).

<sup>4</sup> See note 1 to R.P. 11; R.P. 17; Illustration of charge-sheet in R.P. App. I on p. 714.

<sup>5</sup> R.P. 14 (B).

<sup>6</sup> R.P. 14 (A).

<sup>7</sup> R.P. 15 (A) (B). As to summons to witnesses, see R.P. 78, and form on p. 761. As to expenses of witnesses, see Allowance Regulations, 322-4, 372.

The accused, if charged jointly with any person whom he claims as a material witness for his defence, may apply to be tried separately from that person, and the convening officer may grant a separate trial if the nature of the charge permits.<sup>1</sup>

The accused is entitled to have, if he desires it, a list of the officers who will form the court as soon as they have been detailed<sup>2</sup>; he is not bound to give the prosecutor a list of his own witnesses.<sup>3</sup>

25. The accused may himself arrange for the services of counsel to represent him at his trial. If he intends to be represented by counsel, he must give notice to that effect, so that the convening officer may, if he considers it desirable, obtain the services of counsel on behalf of the prosecutor. If the accused does not intend to be so represented, but counsel has been obtained on behalf of the prosecutor, the convening officer must take steps to inform the accused to that effect not less than seven days before the trial, so that the accused may himself obtain counsel for his defence, if he so desires.<sup>4</sup>

Securing legal aid for defence and prosecution.

26. The qualifications of counsel (*i.e.*, barristers-at-law, advocates, solicitors, law agents, &c.,) are set out in the Rules of Procedure, as are also their functions, rights and duties.<sup>5</sup>

Qualifications, duties, &c., of counsel and defending officer.

A defending officer has the same functions, rights and duties as counsel. The 'friend' of the accused can only act in an advisory capacity.<sup>6</sup>

27. In order to ensure that an accused person is represented at his trial if he so desires, it is the duty of the officer referred to in para. 24 above, at the time he hands the summary of evidence to the accused, to ask him to state in writing if he wishes to have a defending officer assigned to him by the convening officer; if he does so wish, the convening officer must use his best endeavours to secure the services of a suitable officer.<sup>7</sup>

Assignment of defending officer for accused.

### (vi) *Assembly of Court.*

28. When a court-martial assembles at the time and place named in the convening order the members will take their seats according to their army rank.<sup>8</sup> If a judge-advocate has been appointed, he must be present, as should also be any waiting members detailed in the convening order to serve as members of the court if required.

Assembly of court.

The order convening the court, the charge-sheet and the summary (or abstract) of evidence will then be produced by the officer appointed as president<sup>9</sup> to whom they will have been forwarded previously by the convening officer.<sup>10</sup>

29. The court will examine the convening order for the purpose of ascertaining whether the president and members who have taken their seats, the judge-advocate (if any), and any waiting members present who may have been detailed are those mentioned

Inquiry as to composition of court.

<sup>1</sup> R.P. 16.

<sup>2</sup> R.P. 15 (C).

<sup>3</sup> R.P. 77.

<sup>4</sup> R.P. 66 (A) (B).

<sup>5</sup> R.P. 66-68.

<sup>6</sup> R.P. 67.

<sup>7</sup> R.P. 14 (B), 87 (B).

<sup>8</sup> R.P. 68.

<sup>9</sup> R.P. 22 (A).

<sup>10</sup> R.P. 17 (B).

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in the order. If the members present (other than the president) are not actually named in the order they must be of the actual ranks and belong to the actual units stated therein.

If the convening order appears on the face of it to be proper and to have been duly signed, the court will have fulfilled their first duty, namely, that of satisfying themselves that the court has been convened in accordance with the Army Act and Rules of Procedure.<sup>1</sup>

Inquiry as  
to legal  
minimum  
of members.

30. The court will next ascertain whether the legal minimum of members required by the Army Act for a district or general court-martial (as the case may be) has been detailed and is present.<sup>2</sup> If such legal minimum is not present, the court must adjourn; but if the legal minimum of officers was detailed in the convening order, waiting members, if there are any, and if eligible and qualified, may take the place of absentee members.

If the number of members detailed in the convening order exceeds the legal minimum, but some of them are absent at the assembly of the court, the court should ordinarily adjourn unless sufficient waiting members are available to serve in place of the absentee members; but the court, in the interests of justice and for the good of the service, may proceed with the trial provided that the legal minimum is present.<sup>3</sup>

Inquiry as  
to eligibility  
and quali-  
fications of  
members.

31. The court will then satisfy themselves that the president is of the required rank<sup>4</sup> and that all the members are eligible and not disqualified under the Army Act and Rules of Procedure. The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law or otherwise qualified to serve under the provisions of the Army Act and having held a commission for the required period. Disqualification is a personal question, and depends on his being, or having been, a party to the case. The grounds of ineligibility and disqualification are set out in paras. 16–19 above.

If the trial is by general court-martial the court must be satisfied that the members are of the required rank.<sup>5</sup>

Judge-  
advocate.

32. Where a judge-advocate has been appointed the court should ascertain if he has been duly appointed and is not disqualified.<sup>6</sup> In the United Kingdom the Judge-Advocate-General appoints the judge-advocate; elsewhere the convening officer makes the appointment. A judge-advocate must be appointed for every general court-martial.<sup>7</sup>

Powers of  
adjourn-  
ment of  
court.

33. The court have wide discretionary powers of adjournment if not satisfied on any of the above matters,<sup>8</sup> and circumstances may arise which render an adjournment compulsory—*e.g.*, if the president is ineligible or disqualified,<sup>9</sup> or the court is finally reduced below the legal minimum. Any adjournment and the reason therefor must be reported to the convening officer.<sup>10</sup>

<sup>1</sup> R.P. 22.

<sup>2</sup> A.A. 48 (3) (4); and see paras. 16 and 17 above.

<sup>3</sup> R.P. 18.

<sup>4</sup> A.A. 48 (9), 182 (4); and see paras. 16 and 17 above; R.P. 22 (A) (iv).

<sup>5</sup> A.A. 48 (3) (7); R.P. 21; see also para. 17 above; R.P. 22 (A) (v).

<sup>6</sup> A.A. 50 (3); R.P. 22 (B), 101 (B).

<sup>7</sup> R.P. 101 and note 1 thereto.

<sup>8</sup> R.P. 22 (C).

<sup>9</sup> A.A. 51 (3).

<sup>10</sup> R.P. 22 (C).

34. Having ascertained the validity of their constitution: ne court will next consider whether the accused is amenable to their jurisdiction.<sup>1</sup> The subject of the jurisdiction of district and general courts-martial is dealt with in paras. 10-15 above.

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Amenability to jurisdiction.

35. Finally the court must be satisfied that each charge discloses an offence under the Army Act and is properly framed in accordance with the Rules of Procedure; and is so explicit as to enable the accused readily to understand what he has to answer.<sup>2</sup>

Inquiry as to validity of charges.

If not satisfied on the above matters, the court should report their opinion to the convening authority and may adjourn for the purpose.<sup>3</sup>

#### (vii) *Opening of the Court.*

36. At the conclusion of the above preliminary proceedings the accused will be brought before the court; if he is an officer, he will be in the custody of an officer; if he is a non-commissioned officer, in the custody of a non-commissioned officer; if he is a private soldier, in the custody of an escort. If necessary, an escort may be employed in any case.

Appearance of accused, prosecutor, counsel, &amp;c.

The prosecutor, who must be a person subject to military law, will take his place in court, and accommodation will be afforded for the defending officer, counsel or 'friend' of the accused.

It is customary, though not obligatory, for the witnesses to be present in court from the time when the accused is brought in until after the members have been sworn; they must then withdraw and should not, as a rule, be allowed to be in the court when not under examination.

37. The court is now open, and the public, whether military or otherwise (including the press), may be admitted so far as accommodation permits. It may be closed at any time to enable the members to deliberate in private.<sup>4</sup>

Opening of court.

A court-martial is an open court like other courts of justice, but it has inherent powers to sit *in camera* if such course is necessary for the administration of justice.<sup>5</sup>

38. The convening order will next be read in full by the president or judge-advocate (if any), and the members will answer to their names.<sup>6</sup> The accused will be asked whether he objects to be tried by the president or any of the officers whose names have been read.

Objections by accused to members of court.

The Army Act and Rules of Procedure contain elaborate provisions as to the mode of enquiring into and disposing of objections by or on behalf of the accused. A successful objection to the president will necessitate the adjournment of the court and a reference to the convening officer in order that a new president may be appointed or a new court convened. If, upon a successful objection to a member, no waiting member who is eligible and qualified is available to fill the vacancy, the court should normally adjourn, but may proceed with the trial in certain circumstances, provided that there is a legal minimum of members present.<sup>7</sup>

<sup>1</sup> R.P. 23 (A) (i).

<sup>2</sup> R.P. 23 (A) (ii).

<sup>3</sup> R.P. 23 (B).

<sup>4</sup> A.A. 53 (5); R.P. 63.

<sup>5</sup> *R. v. Lewis Prison (Governor)* L.R. [1917], 2 K.B. 254

<sup>6</sup> R.P. 25 (A).

<sup>7</sup> A.A. 51; R.P. 25, 18.

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Where, upon a successful objection to a member of the court, an adjournment is necessary, the convening officer can, if he pleases, convene a new court, as the trial of the accused is not considered to begin until the court are sworn.<sup>1</sup>

Swearing of  
court, judge-  
advocate,  
&c.

39. As soon as the court is finally constituted, the president, members and judge-advocate (if any) will be sworn, all present in court standing. Officers attending under instruction, shorthand writer and interpreter (if any) will also be sworn at this stage though a shorthand writer or interpreter may be sworn at any time during the trial.<sup>2</sup> The accused has a right of objection to a shorthand writer or interpreter<sup>3</sup> but not to the judge-advocate<sup>4</sup> or officers under instruction.

The court may be sworn at one time to try several accused persons in succession provided that such persons are present when the oath is taken and have been given an opportunity of objecting to members.<sup>5</sup>

Oaths and  
declarations.

40. The form of oath and the manner of taking it by all persons required to be sworn, and the persons who are to administer it are prescribed in the Army Act and Rules of Procedure. Provision is also made whereby instead of taking the prescribed form of oath a person may make a solemn declaration; or the oath may be taken in the Scottish fashion or in such form and with such ceremonies as the person to be sworn declares to be binding on his conscience.<sup>6</sup>

Absence of  
members  
during trial.

41. A member of a court who has been absent during any part of the evidence ceases to be a member, and an officer cannot be added to a court-martial after the accused has been arraigned.<sup>7</sup>

(viii) *Arraignment of accused.*

Reading of  
charges.

42. As soon as the members, judge-advocate (if any) and others have been sworn, the accused will be arraigned. Arraignment consists in the reading of each charge upon a charge-sheet separately to the accused and asking him whether he is guilty or not guilty of it.<sup>8</sup> The judge-advocate (if any) or, in his absence, the president, conducts the arraignment.

If there are several charges on one charge-sheet, the accused may claim separate trial on each or any charge on the ground that, unless so tried, he will be embarrassed in his defence.<sup>9</sup>

If there are alternative charges upon one charge-sheet, and the accused pleads guilty to the first of such alternatives, the prosecutor may withdraw the other alternative charges before the accused is arraigned upon them; otherwise the accused will be arraigned upon all the charges whether they are alternative or not.<sup>10</sup>

If there is more than one charge-sheet, the court must not arraign the accused upon any subsequent charge-sheet until their finding upon the first charge-sheet has been arrived at.<sup>11</sup>

<sup>1</sup> R.P. 18 (B).

<sup>2</sup> A.A. 52 (1) (2); R.P. 26, 27, 72.

<sup>3</sup> R.P. 71 (C).

<sup>4</sup> R.P. 25 (B).

<sup>5</sup> R.P. 71.

<sup>6</sup> A.A. 52, 190 (28); R.P. 26-30 and App. II (9), pp. 762-3.

<sup>7</sup> R.P. 68.

<sup>8</sup> R.P. 31.

<sup>9</sup> R.P. 62 (E).

<sup>10</sup> R.P. 35 (A) (C).

<sup>11</sup> R.P. 62 (A).

The accused, if charged jointly with any person whom he claims as a material witness for his defence, may apply, if he has not already done so,<sup>1</sup> to be tried separately from that person, and the court may grant separate trial if the nature of the charge permits.<sup>2</sup>

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43. Before pleading to any charge, the accused may object to the charge as not disclosing an offence under the Army Act or as not being in accordance with the Rules of Procedure. If the court disallow the objection, the trial will proceed; if they allow it, they will, or, if in doubt, they may, adjourn to consult the convening officer who may amend the charge and direct that the trial be proceeded with.<sup>3</sup>

Objection to charge.

The court may always themselves amend a mistake in the charge-sheet so far as it relates to the name and description of the accused but not otherwise.<sup>4</sup>

Apart from any objection by the accused, the court has power, before any witnesses are examined, to report their opinion as to any charge which appears to them to be faulty to the convening officer, who may either amend the charge or direct a new trial to be commenced.<sup>5</sup>

44. The accused, before pleading to any charge, may offer a plea to the general jurisdiction of the court and give evidence in support of that plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea be overruled, the court will proceed with the trial; if it be allowed, the court must record their decision and the reason therefor, report to the convening officer and adjourn; if in doubt, the court may either refer to the convening officer or record a special decision and proceed with the trial.<sup>6</sup>

Plea to the jurisdiction.

A plea to the jurisdiction is a plea to the right to try the accused on any charge as distinct from a plea which relates to a particular charge. The grounds for such a plea are shown in paras. 10-15 above.

45. The objection and plea referred to in the two preceding paragraphs having been disposed of (if raised), the accused's plea to the charges upon which he has been arraigned will be recorded; this will normally be 'guilty' or 'not guilty.' But the accused may refuse to plead or plead unintelligibly, in which case a plea of 'not guilty' must be recorded<sup>7</sup>; or it may be urged that the accused is unfit to plead by reason of insanity, for which event the Army Act and Rules of Procedure make provision.<sup>8</sup>

Recording of plea; refusal to plead; insanity, &amp;c.

46. In addition to pleading 'guilty' or 'not guilty' the accused may offer a plea in bar of trial, setting up that he has been previously acquitted or convicted of the offence now charged, or that such offence has been pardoned or condoned by competent military authority (*see* para. 13 above), or that trial is barred by lapse of time (*see* para. 14 above). Upon the hearing of this plea, evidence may be offered both by the accused and prosecutor, and

Plea in bar of trial.

<sup>1</sup> See para. 24 above.

<sup>2</sup> R.P. 16.

<sup>3</sup> R.P. 32.

<sup>4</sup> R.P. 33 (A).

<sup>5</sup> R.P. 33 (B).

<sup>6</sup> R.P. 34.

<sup>7</sup> R.P. 35 (A).

<sup>8</sup> A.A. 130; R.P. 57.

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addresses may be made. If the court find the plea not proven, they will proceed with the trial; if they find it proven, they will notify their finding to the confirming authority and adjourn, though they may proceed with any other charge not affected by the plea. In either case their finding on the plea requires confirmation.<sup>1</sup>

## Plea of guilty.

47. If the accused pleads 'guilty' to a charge, the president or judge-advocate (if any) must, before recording the plea, carefully explain to him the nature of the charge and the effect of his plea. It should also be pointed out to him that on a plea of 'guilty' there will be no regular trial but merely a consideration by the court of the sentence to be awarded; that he is entitled to make a statement in mitigation of punishment and call witnesses as to his character<sup>2</sup>. He should also be informed that if he wishes to prove provocation or extenuating circumstances having direct relation to the offence, he should plead 'not guilty.'

The court must not accept a plea of 'guilty' in a case where the accused is liable, if convicted, to be sentenced to death; in such a case a plea of 'not guilty' will be recorded.<sup>3</sup>

## Mixed plea.

48. If the accused adheres to his plea of 'guilty,' the court will then proceed to try the accused upon any other charge upon the same charge-sheet to which he has pleaded 'not guilty' and reach their finding thereon before proceeding further with the plea of 'guilty.'<sup>4</sup> The Rules of Procedure make special provisions in the case where the accused pleads guilty to the first of two or more alternative charges.<sup>5</sup>

## Procedure on plea of guilty.

49. When the court proceeds with a plea of 'guilty,' the summary (or abstract) of evidence will be read and sufficient evidence will be recorded to cover any deficiencies in the summary (or abstract). The accused or his counsel or defending officer may make a statement in reference to the charge and in mitigation of punishment, and witnesses as to character may be called.<sup>6</sup>

If from the statement of the accused, or from the summary (or abstract) of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea, the court must enter a plea of 'not guilty' and proceed with the trial.<sup>7</sup>

The procedure in connection with the giving in evidence of the character and particulars of service of the accused and with the consideration and award of sentence is dealt with in paras. 75-86 below.

## Duties of president.

50. It should be stated here that the president is responsible for the proper conduct of every trial whether the accused pleads 'guilty' or 'not guilty.' He must ensure that the accused does not suffer any disadvantage by reason of the fact that he is being tried, or because of his ignorance or incapacity to make clear either his defence to the charge or the grounds upon which he relies in mitigation of any punishment which may be awarded.<sup>8</sup>

<sup>1</sup> R.P. 36.

<sup>2</sup> R.P. 35 (B).

<sup>3</sup> R.P. 35 (1).

<sup>4</sup> R.P. 37 (A).

<sup>5</sup> R.P. 35 (C).

<sup>6</sup> R.P. 37 (B) (C).

<sup>7</sup> R.P. 37 (D).

<sup>8</sup> R.P. 59.



(ix) *Trial on plea of 'not guilty.'*

51. Before proceeding with a trial on a plea of 'not guilty,' the court must ask the accused whether he wishes to apply for an adjournment on the ground that he has been prejudiced by non-compliance with any of the rules relating to procedure before trial or has had insufficient opportunity to prepare his defence. The court may hear evidence upon any such application and may adjourn if they consider it proper to do so.<sup>1</sup>

52. The prosecutor should always make an opening address if the case is a complicated one, and the court may require such address to be made. He should explain the substance of the charge and outline the evidence to be called in support of it.<sup>2</sup>

The prosecutor is not a partisan but an officer of justice whose duty it is by laying all relevant facts in evidence before the court to assist the court in ascertaining the truth. He must act with scrupulous candour, fairness and moderation towards the accused, the witnesses and the court.<sup>3</sup>

53. The witnesses for the prosecution will now be called. Each witness will take the necessary oath or make the required declaration<sup>4</sup> and his examination will be conducted by the prosecutor, who must be careful to refrain from asking leading or suggestive questions. After giving his evidence "in chief" or "in direct examination" a witness may be cross-examined by or on behalf of the accused and re-examined by the prosecutor on matters raised by the cross-examination.<sup>5</sup> The president, judge-advocate (if any) and with permission of the court, any member of the court may question a witness at any time before he withdraws, but such questions should not be put until after the re-examination by the prosecutor.<sup>6</sup>

54. As a witness gives his evidence it must be taken down, in narrative form, as nearly as possible in the words used; occasionally it may be material or desirable to take down question and answer *verbatim*. The judge-advocate or, if there is none, the president must record the evidence or cause it to be recorded, and is responsible for its accuracy and for the proceedings as a whole.<sup>7</sup> The form in which the record is to be made is provided in Appendix II of the Rules of Procedure.

Special provision is made for the case where a shorthand writer is employed.<sup>8</sup>

55. Where an interpreter is employed, great caution should be exercised to ensure accurate translation and to guard against misconception of the true meaning of any expression, from either the incompetence or possible bias of the interpreter.<sup>9</sup>

In India a qualified military officer is usually appointed; in the overseas possessions courts-martial usually have the assistance

<sup>1</sup> R.P. 39 (A).

<sup>2</sup> R.P. 39 (B).

<sup>3</sup> R.P. 60 (A) (B).

<sup>4</sup> A.A. 52 (3) (4); R.P. 82, App. II (3), pp. 762-3.

<sup>5</sup> R.P. 83 (A), 84 (A).

<sup>6</sup> R.P. 85.

<sup>7</sup> R.P. 94, 95 (A).

<sup>8</sup> R.P. 83 (C).

<sup>9</sup> R.P. 95, note 1.

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—

of interpreters employed by the civil courts. A member of a court-martial is not disqualified from acting as an interpreter, but this is inconvenient where the trial is likely to be prolonged.

Reading  
over the  
evidence.

56. Before a witness withdraws, the whole of his evidence as recorded must be read to him to ensure its accuracy; he may then make further explanations or corrections. This procedure may be dispensed with where a shorthand writer is employed.<sup>1</sup>

Opening  
of defence.

57. After all the evidence for the prosecution has been given, the accused must be told that he may, if he wishes, give evidence on oath as a witness, and that if he does so, he will subject himself to cross-examination and to being questioned by the court; he must also be told that he need not give sworn evidence, but can make a statement not upon oath in his defence, if he wishes to do so. He should be informed that evidence upon oath will naturally carry more weight with the court than a statement not upon oath.<sup>2</sup>

Procedure  
on case  
for defence.

58. The answer of the accused to the question as to whether he wishes to give evidence himself having been recorded, he will then be asked if he wishes to call witnesses in his defence either as to the facts or as to character; his answer will be recorded. The correct procedure to be followed hereafter will depend upon the answers which he has given, and in order to determine the proper sequence in which, in varying circumstances, the evidence for the defence is to be taken and the addresses on behalf of the prosecution and defence are to be made, the court will consult Rules of Procedure 40 and 41, wherein every possible variation and contingency is provided for.

Addresses  
for defence  
and reply.

59. Where an opening address by or on behalf of the accused is permitted, the terms of such address should be directed mainly towards outlining the evidence to be called for the defence. The prosecutor in his final address or reply may comment on the evidence (if any) of the accused and of the witnesses for the defence, but he may not at any time comment on the fact that the accused has refrained from giving evidence as a witness.<sup>3</sup>

In no case may the prosecutor, counsel or defending officer, in the course of an address, state as a fact any matter which has not been proved or which it is not intended to prove in evidence; nor may they state what is their opinion as to any matter of fact which the court has to decide.<sup>4</sup>

Accused as  
a witness.

60. If the accused is the only witness as to the facts of the case called by the defence, he must give evidence immediately after the close of the case for the prosecution<sup>5</sup>; if other witnesses as to the facts are called, the accused should, but need not, give his evidence before theirs is given. The accused must, unless otherwise ordered by the court, give his evidence from the witness box or place from which the other witnesses have given their evidence.<sup>6</sup> He will be examined by his counsel or defending officer or, if not represented, will tell his story, being assisted by the court, if necessary, to present it in proper form and sequence. He may be cross-examined by the prosecutor, re-examined, and questioned

<sup>1</sup> R.P. 83 (B) (C).

<sup>2</sup> R.P. 40 (A) (B).

<sup>3</sup> R.P. 80 (B).

<sup>4</sup> R.P. 92 (C) (D), 87 (C).

<sup>5</sup> R.P. 80 (F).

<sup>6</sup> R.P. 80 (C).

by the court.<sup>1</sup> The cross-examination of the accused must be conducted with fairness and moderation and with the sole object of arriving at the truth. Ch. V

61. The accused must be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations, whether in his sworn evidence or in a statement not upon oath.<sup>2</sup> Latitude to accused in defence.

If the accused elects to make a statement in his defence without being sworn, he cannot be cross-examined by the prosecutor or questioned by the court or any other person.<sup>3</sup>

62. The witnesses for the defence will be examined by the accused or his counsel or defending officer, cross-examined by the prosecutor, and re-examined; they may also be questioned by the court.<sup>4</sup> Witnesses for defence.

63. At the request of the prosecutor or accused, and by leave of the court, a witness may be recalled for the purpose of having further questions put to him through the president or judge-advocate (if any). The court may also allow the prosecutor to call or recall a witness to rebut any material evidence on any unforeseen matter which may have arisen or, as a reply to the witnesses of character called for the defence, to prove previous convictions against the accused. In all these cases the additional evidence must be given before the closing address by or on behalf of the accused. The court may, of their own motion, call or recall any material witness if it is necessary to do so in the interests of justice; such witness may be called or recalled at any time before the finding of the court is arrived at.<sup>5</sup> Recalling of witnesses.

64. An accused person is at liberty at any time to withdraw a plea of 'not guilty' and plead 'guilty.'<sup>6</sup> Withdrawal of plea of 'not guilty.'

65. When all evidence has been given and addresses made, the judge-advocate (if any) will sum up, unless both he and the court consider a summing-up to be unnecessary. He should always do so where the facts are difficult or complicated, and in particular where special legal directions are required to be given. The summing-up must be impartial, but the judge-advocate may, at his discretion, comment on the failure of the accused to give evidence.<sup>7</sup> Summing-up by judge-advocate.

#### (x) *Consideration of finding.*

66. The finding must be considered in closed court,<sup>8</sup> the members, judge-advocate (if any), and officers under instruction alone being present. The court must make a finding on every charge upon which the accused was arraigned, including any alternative charge.<sup>9</sup> Finding in closed court.

<sup>1</sup> R.P. 84 (A), 85; for cross-examination as to character, see R.P. 80 (D).

<sup>2</sup> R.P. 60 (C).

<sup>3</sup> R.P. 40 (D) (ii) (a); 41 (B) (ii) (a).

<sup>4</sup> R.P. 84 (A).

<sup>5</sup> R.P. 86 (D).

<sup>6</sup> R.P. 38.

<sup>7</sup> R.P. 42, 103.

<sup>8</sup> R.P. 43 (A).

<sup>9</sup> R.P. 44 (A).

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Onus of  
proof;  
reasonable  
doubt;  
corrobor-  
ation.

67. At the outset of their deliberations the court must remember that it is a principle of English law that the accused is presumed to be innocent until he is proved to be guilty, and that the burden of proof rests upon the prosecution. Unless, therefore, the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitted, as the prosecution has failed to sustain adequately the burden of proving his guilt.

Generally speaking, it is legally open to a court to convict an accused person upon the evidence of one credible witness. But in some cases corroboration of such witness is required by law; in others it is required by practice almost amounting to a rule of law. In some instances it is desirable that corroboration should be looked for though not actually required by law or practice.<sup>1</sup>

Extraneous  
consider-  
ations.

68. The court, in considering their decision, must not be influenced by the consideration of any supposed intention of the convening officer in sending the accused for trial by a particular kind of court-martial. In many cases the convening officer will have decided no more than that a *prima facie* case against the accused is shown upon the summary of evidence, and he will have formed no opinion as to the guilt of the accused. An acquittal, therefore, is not in itself a reflection upon the convening officer. Even if it were, it would afford no reason whatever for a court to convict, unless the evidence established the charge.

Proof of  
facts  
charged;  
special  
finding  
on the  
charge.

69. The court must decide whether the facts alleged in the particulars of each charge have been proved in evidence, and, if proved, whether they disclose the offence stated in the charge itself or some other offence of which they may, pursuant to their powers under s. 56 of the Army Act, find the accused guilty. Thus, on a charge of desertion they may find the particulars as to the period of absence proved, but not the intent to leave His Majesty's service altogether, or to avoid some particular important service—a necessary ingredient of the charge. In such a case they may return a finding of not guilty of desertion, but guilty of absence without leave.<sup>2</sup>

Special  
finding  
as to the  
particulars  
of a charge.

70. Where the court find that the facts proved in evidence differ materially from the facts alleged in the particulars of a charge, but are nevertheless sufficient to prove the offence charged, and that the difference is not so material as to have prejudiced the accused in his defence, they may record a special finding as to the particulars. Thus, on a charge of desertion, if the court are satisfied that the charge as laid is proved, but the period of absence was shorter than that alleged in the particulars, they may make a special finding to that effect.<sup>3</sup>

Insub-  
ordinate,  
&c.,  
language.

71. Military offences frequently consist in the use of threatening, insubordinate or obscene language. Great care should be taken to discriminate between mere angry or irritable expressions, and words indicating a deliberate intention to be insubordinate or to resist lawful authority. A soldier in an outburst of momentary irritation or excitement often uses violent language without intending to be insubordinate. Again, allowance must be made for the coarse expressions which a man of inferior

<sup>1</sup> As to evidence generally, see Ch. VI., and particularly (as to corroboration) para. 46.

<sup>2</sup> A.A. 56 (3); see R.P. App. II (1), p. 753.

<sup>3</sup> R.P. 44 (D) (E); see R.P. App. II (1), p. 753.

education will often use as mere expletives. Such expressions may be insubordinate if used to a commissioned officer but not so when used to a non-commissioned officer, or when used in one set of circumstances but not in another. Language, therefore, should be construed with due regard to all surrounding circumstances; and the intention of the user of it should be carefully considered before it is held to constitute the grave offence of using threatening or insubordinate language to a superior officer.

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72. The court having arrived at a decision as to the facts of a case, have power, in cases of doubt as to the legal effect of such a decision upon the charges preferred, to refer to the confirming authority for an opinion upon the matter, before recording their finding.<sup>1</sup>

Reference to confirming authority before finding.

73. Every member must give, by word of mouth, his opinion as to the finding which should be made on each charge separately.<sup>2</sup> The opinions must be taken in succession, beginning with the junior in rank.<sup>3</sup> If the votes given are equal, the accused will be deemed to be acquitted.<sup>4</sup> The president has no second or casting vote upon the finding. A majority of votes will decide the issue and the finding of the majority will be recorded as the finding of the court.<sup>5</sup>

Voting on the finding;

74. A finding of acquittal, whether upon all or any one or more of the charges in a charge-sheet, must be announced upon the re-opening of the court. If the accused has been acquitted on all the charges in a charge-sheet and there are no further charges to be tried, he must be released.<sup>6</sup>

Acquittal.

A finding of acquittal is final; it cannot be revised, nor does it require confirmation by superior authority.<sup>7</sup>

An accused person may be 'honourably acquitted,' if his honour was affected by the charges preferred.<sup>8</sup>

The record of the proceedings in the case of an acquittal must be authenticated by the signature of the president and judge-advocate (if any) and forwarded to the officer who would have confirmed them if a conviction had resulted.<sup>9</sup>

#### (xi) *Proceedings on conviction.*

75. If the finding upon any charge is 'guilty' (whether or not the accused has pleaded guilty thereto), and the trial of all charges and charge-sheets has been completed, the court, for the purpose of determining their sentence, must, whenever possible, take and record evidence as to the character, age, service, &c., of the accused. This evidence must be given by a witness on oath, usually by the prosecutor, who will produce extracts from the regimental books relating to the accused in accordance with the Rules of Procedure and King's Regulations. The accused or

Evidence of character on conviction.

<sup>1</sup> R.P. 44 (C) (G).

<sup>2</sup> R.P. 43 (B), 69 (A).

<sup>3</sup> R.P. 69 (C).

<sup>4</sup> A.A. 53 (8).

<sup>5</sup> R.P. 69 (B); see however A.A. 48 (8).

<sup>6</sup> A.A. 54 (3); R.P. 45 (A) (C).

<sup>7</sup> A.A. 54 (3).

<sup>8</sup> R.P. 44 (A).

<sup>9</sup> R.P. 45 (A) (B).

**Ch. V** his representative may then cross-examine this witness. Verbal  
— evidence of bad character cannot be given for the prosecution.

The accused may call evidence as to his good character at this stage as well as during the hearing of the case for the defence, and the prosecutor has a right of cross-examination to test the veracity of such evidence, even if he thereby brings out evidence of the accused's bad character.

After all evidence as to character has been given, the accused, or his counsel or defending officer may address the court thereon, and in mitigation of punishment.<sup>1</sup>

The court will then be closed for consideration of sentence.

(xii) *Award of sentence.*

Legality and  
form of  
sentence.

76. The punishment awarded must be one of those allowed by the Army Act<sup>2</sup>; in some cases a combination of punishments is permitted by the Act.<sup>3</sup>

One sentence only must be awarded in respect of all the offences of which an accused person has been found guilty, even if the trial has proceeded on different charge-sheets; and where an accused person has been found guilty upon several charges, a sentence which can legally be awarded in respect of one of them will be valid notwithstanding that it could not legally have been awarded in respect of the others.<sup>4</sup>

The sentence should follow the prescribed forms set out in Appendix II to the Rules of Procedure; or, if no form is exactly applicable, it should follow as nearly as possible the words of the Army Act.

Discretion  
as to  
sentence.

77. A court-martial has (except in the case of an officer charged under s. 16 of the Army Act with scandalous conduct, and in the case of a conviction for murder under s. 41 (2)) an absolute discretion as to its sentence. It may award the maximum punishment allowable for the particular offence charged, or such less punishment as is laid down in s. 44 of the Army Act, which sets out a graduated scale of the punishments which a court-martial may award.

Maintenance  
of discipline  
the object.

78. In deliberating on their sentence a court-martial should remember that the object of awarding punishment is the maintenance of discipline, and should bear in mind the considerations to which their attention is directed by the King's Regulations.<sup>5</sup>

The proper amount of punishment to be inflicted is the least amount by which discipline can efficiently be maintained. Occasionally the exigencies of discipline, apart from the circumstances of a particular case, may render a severe sentence necessary; but in all cases the whole force should be in a position to realise that the punishment awarded to any individual is not more than is necessary in the interests of the force itself and for the maintenance of that discipline without which all bodies of troops become irresponsible mobs and useless for the purpose for which they exist. It

<sup>1</sup> R.P. 46.

<sup>2</sup> See A.A. 44; as to Indian officers A.A. 180 (2); as to warrant officers A.A. 182; as to N.C.Os. A.A. 188. As to punishments generally, see K.R. 652.

<sup>3</sup> E.g., A.A. 44 (2) (3) (4) (6) (11) (12); A.A. 180 (2) (e); A.A. 182 (2); A.A. 183 3).

<sup>4</sup> R.P. 46.

<sup>5</sup> K.R. 652.

must be the object of all concerned to aim at that high state of discipline which springs from a military system administered with judgment and impartiality, and to induce in all ranks a feeling of confidence that, while no offence will be passed over, no offender will in any circumstances suffer injustice.

79. If the accused has elected to be tried by a district court-martial, instead of submitting to the jurisdiction of his commanding officer, his punishment should not, in ordinary circumstances, exceed that which the commanding officer had power to award. Other considerations; degrees of criminality, &c.

A non-commissioned officer should, as a rule, be more severely punished than a private soldier concerned with him in the commission of the same offence, while the instigator of an offence should receive a more severe sentence than the person who was instigated to commit it. Where several offenders are found guilty of the same offence, it may often be proper to award different amounts of punishment and, in order that the respective degrees of criminality of several offenders charged in respect of the same transaction but tried separately may be more accurately determined, a court-martial has power to postpone the awarding of any sentence until all the offenders have been tried.<sup>1</sup>

80. The court must pay special regard to the question whether the offences of which the accused has been found guilty were committed with or without premeditation and with or without provocation. It is obvious that a theft committed after long preparation deserves more severe punishment than a theft committed on the spur of the moment. Similarly, a court would be justified in awarding a more lenient sentence to a soldier who has been provoked into striking his superior officer than to one who had deliberately struck his superior officer without provocation. As a general rule the improper use of words should not be treated with the same severity as offences against discipline involving physical acts. Premeditation and provocation.

81. Again, due regard should be paid by the court to previous convictions. A habitual offender deserves far more severe punishment than an infrequent offender, and a first offender should always, if possible, be treated leniently. Previous convictions.

82. Military offences must sometimes be considered in reference to circumstances other than those connected with the individual offender. When there is a general prevalence of offences or of offences of some particular kind, an example may be necessary,<sup>2</sup> and on that account a severe punishment may properly be awarded for an offence which would otherwise receive a more lenient punishment. In such cases the punishment must be regarded more from the point of view of the effect which it will produce on the force to which the offender belongs than from that of the offender himself. Prevalence of offences.

83. Finally the court, having due regard to the foregoing considerations, must always award such punishment as they themselves consider to be just and proper in the circumstances of the particular case. They must not presume that the convening officer, in sending the case for trial, took a more serious view of the facts than they themselves take. Punishment to be just and proper.

<sup>1</sup> R.P. 71 (D).

<sup>2</sup> See K.R. 662 (footnote).

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Recommen-  
dation to  
mercy.

84. In view of the discretion of the court<sup>1</sup> in the matter of awarding sentence, a recommendation to mercy will be exceptional. If such recommendation is made, it must form part of the proceedings and the reason for it must be recorded.<sup>2</sup> It will usually be made only when the court, though unwilling to pass a lenient sentence lest the offence should be considered a venial one, think that owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in their judgment, the offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

A court may recommend the restoration of service forfeited under s. 79 of the Army Act.<sup>3</sup>

Any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report, must be stated in a separate document for the information of the confirming authority.<sup>4</sup>

Voting on  
the  
sentence.

85. Every member of the court must give his opinion as to the sentence to be awarded, even if he had voted for an acquittal upon the finding. The officer junior in rank must first give his opinion. In the case of an equality of votes, the president has a second or casting vote. An absolute majority of the opinions of the members must be secured,<sup>5</sup> but sentence of death may not be passed without the concurrence of at least two-thirds of the members.<sup>6</sup>

Signature  
and for-  
warding of  
proceedings.

86. When the sentence has been decided upon, it must be recorded upon the proceedings, which will then be signed by the president and judge-advocate (if any). The judge-advocate or if there is none the president, must then forward the proceedings as soon as possible to the confirming authority or the person directed in the convening order to receive them.<sup>7</sup>

(xiii) *Confirmation and revision.*

Conviction  
not valid  
till con-  
firmation.

87. A finding of guilty and the sentence consequent thereon are not valid until confirmed by superior authority.<sup>8</sup> Until promulgation the accused will be in ignorance of the sentence awarded; but special provision is made whereby he is to be informed prior to confirmation if a sentence of death has been passed.<sup>9</sup>

Confirma-  
tion of  
district  
court-  
martial.

88. The finding and sentence of a district court-martial are to be confirmed by an officer authorised to convene general courts-martial, or deriving authority to confirm from an officer authorised to convene general courts-martial.<sup>10</sup>

<sup>1</sup> See para. 77 above.

<sup>2</sup> A.A. 53 (9); R.P. 49.

<sup>3</sup> R.P. 49 (B).

<sup>4</sup> R.P. 95 (D).

<sup>5</sup> A.A. 53 (8); R.P. 69 and notes.

<sup>6</sup> A.A. 48 (8). See A.A. 49 (2) as to field general court-martial.

<sup>7</sup> R.P. 50.

<sup>8</sup> A.A. 54 (6).

<sup>9</sup> R.P. App. II note (b) on p. 762.

<sup>10</sup> A.A. 54 (1) (c), 123.



89. The finding and sentence of a general court-martial are to be confirmed by His Majesty, or by an officer deriving authority to confirm either immediately or mediately from His Majesty.<sup>1</sup>

Confirmation of general court-martial.

90. This authority, where given by the King, is given by the warrant respecting courts-martial mentioned in paras. 4-8 above. Any warrant, whether issued by the King or by an officer, may reserve any of the powers which would otherwise be conferred by it.<sup>2</sup>

Reservation of powers.

91. The warrant issued to an officer in the United Kingdom excludes power to confirm a sentence of death, penal servitude, cashiering or dismissal in the case of a commissioned officer, and a sentence of death or penal servitude in the case of a soldier, which consequently require confirmation by the King.

Warrant to confirm in United Kingdom.

92. The warrant issued to an officer commanding abroad usually gives authority to confirm the findings and sentences of general courts-martial, and to delegate that power. Where the officer is the commander-in-chief in India and sometimes where he is commanding-in-chief on active service, the power of confirmation is given without any reservation, except at the option of the officer. In other cases, besides the optional reservation, the warrant reserves for confirmation by the King the finding and sentence when a commissioned officer is sentenced to death, penal servitude, cashiering or dismissal.<sup>3</sup> An officer commanding a force on active service serving in India, or proceeding from India, usually holds his warrant from the commander-in-chief in India; but if he comes under the command of an officer holding a warrant from the King, he can only exercise the confirming power by delegation from that officer.

Warrant to confirm abroad.

93. Every officer empowered to convene general courts-martial has, by virtue of the Army Act, authority to confirm the findings and sentences of district courts-martial, and to delegate that power.<sup>4</sup>

Delegation as to district courts-martial.

94. Upon receipt of proceedings which require to be confirmed, the confirming authority, before confirming, may direct the re-assembly of the court for the purpose of revising their finding and sentence or either of them. Only one revision can be ordered or made; the proceedings on revision must be in closed court, and no additional evidence can be taken.

Revision of finding and sentence.

If the finding is sent back for revision and the court do not adhere to it, they must revoke it and record a new finding. If the finding is revoked they must also revoke the sentence, and, if the new finding involves a sentence (*i.e.*, is not an acquittal), must pass a new sentence, which must not be more severe than the original sentence.

If the sentence only is sent back for revision, the court may not revise the finding nor pass a more severe sentence than that originally awarded.

<sup>1</sup> A.A. 54 (1) (b), 122.

<sup>2</sup> A.A. 122, 123.

<sup>3</sup> This does not apply to a native commissioned officer in a colony, the finding and sentence on whom may, in all cases, be confirmed by the general officer commanding the forces in such colony, or, at his option, reserved for confirmation by the King.

<sup>4</sup> A.A. 123 (1) (c).

## Ch. V

Non-con-  
firmation  
and  
re-trial.

In practice, revision of a sentence only is seldom necessary in view of the powers of the confirming authority.<sup>1</sup>

95. As a conviction and sentence are not valid until confirmed,<sup>2</sup> a refusal of confirmation, duly entered upon the proceedings, operates to annul the whole trial. In such a case the accused has not been convicted and may legally be tried again; but re-trials should rarely be resorted to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. It must be remembered that if an accused at the first trial has disclosed his defence, that defence at a second trial may thereby be prejudiced. In cases requiring confirmation by His Majesty and where such has been withheld, a re-trial is not to be ordered unless directions by His Majesty for such re-trial have been issued; in other cases in the United Kingdom where confirmation has been withheld, re-trial should not be ordered until the Judge-Advocate-General has first been consulted.

If the confirming officer considers that the proceedings of a court-martial are illegal, or involve substantial injustice to an accused person, he will withhold his confirmation.<sup>3</sup>

It is open to the confirming officer to withhold confirmation either wholly or in part, and then refer the proceedings to a superior authority competent to confirm them.<sup>4</sup>

Powers of  
confirming  
authority  
over find-  
ings.

96. The confirming authority has no power to alter or amend the finding, whether original or revised, of a court-martial. After one revision,<sup>5</sup> or if he does not order a revision, he can only confirm it or refuse confirmation, and any superior authority to whom he may refer the proceedings for confirmation is in the same position.

Similarly the confirming authority cannot alter the finding of a court on a plea in bar of trial or on a finding of insanity, both of which require confirmation to support their validity.

Powers of  
confirming  
authority  
over  
sentences.

97. The following are the powers of the confirming authority with relation to the sentences of courts-martial whether or not they have been revised:—

- (a) *mitigation* of a punishment to a less amount of the same punishment.<sup>6</sup>
- (b) *remission* of the whole or part of a sentence.<sup>6</sup>
- (c) *commutation* of the punishment to a different form of punishment<sup>7</sup> lower in the scale of punishments authorised in s. 44 of the Army Act.<sup>6</sup>
- (d) *variation* of a sentence informally expressed, or which is in excess as regards its duration of the punishment allowed by law.<sup>8</sup>
- (e) *suspension* of the execution of a sentence (which will, however, be in force during the suspension).<sup>9</sup>

<sup>1</sup> A.A. 54 (2) (3); R.P. 51, 52.

<sup>2</sup> A.A. 54 (6), 157 and note thereto.

<sup>3</sup> K.R. 665.

<sup>4</sup> A.A. 54 (5); R.P. 51 (B) (ii).

<sup>5</sup> A.A. 54 (2).

<sup>6</sup> A.A. 57 (1) (3) (4) (5). As to the principles upon which the power of mitigation, &c., is to be exercised see K.R. 652, 661-665.

<sup>7</sup> The punishment awarded by the court can be commuted into any two or more punishments lower in the scale which can legally be awarded and which the court could have awarded in conjunction; but see A.A. 57, note 6.

<sup>8</sup> R.P. 56.

<sup>9</sup> A.A. 57 (1).

(f) *suspension of the operation or commencement of a sentence.* Ch. V

This power can only be exercised by the confirming officer if he is a "superior military authority" within the meaning of s. 57A (9) of the Army Act, and only where the sentence awarded is one of penal servitude, imprisonment or detention. If the confirming officer is not a "superior military authority," the sentence can only be suspended by such authority upon reference from the confirming authority.<sup>1</sup>

98. Sentence of death in a colony requires not only confirmation by the military authority, but also approval by the governor of the colony (save when passed in respect of an offence committed on active service). In India such approval is only required where the offence charged is treason or murder; but both in India and a colony a sentence of penal servitude for any offence tried as a civil offence under s. 41 of the Army Act requires the approval of the governor. In India the approval is required to be given by the Governor-General.<sup>2</sup>

Approval of sentence in India or colony.

(xiv) *Promulgation.*

99. The charge, finding and sentence and any recommendation to mercy must be promulgated to the accused as well as the confirmation or non-confirmation of the proceedings. Promulgation must be carried out in such manner as the confirming authority may direct or, if no direction is given, according to the custom of the service.<sup>3</sup>

Promulgation of finding, &c.

As confirmation is not complete until promulgation, the confirming officer may always alter his minute of confirmation or non-confirmation before the proceedings have been promulgated.<sup>4</sup>

100. Even after promulgation, the authority who confirmed the finding and sentence may direct the record of the conviction to be erased and the accused to be relieved of all the consequences of his trial if he thinks that the proceedings are illegal, or that circumstances have arisen which show that the accused could not have been guilty, or that the conviction involves substantial injustice to the accused.<sup>5</sup>

Setting aside conviction.

101. If after promulgation a sentence is found to be invalid, the authority who would have had power to commute it if it had been valid (in normal circumstances the confirming officer) may pass a valid sentence which will have effect as a valid sentence passed by the court, provided that such substituted sentence is not higher in the scale of punishments than the punishment awarded by the invalid sentence, or, in the opinion of the authority awarding such substituted sentence, in excess of the invalid sentence.<sup>6</sup>

Substitution of valid for invalid sentence.

102. After confirmation the punishment awarded can only be mitigated, remitted or commuted by the King, the Army Council or the officer specified in the Army Act or prescribed by the Rules

Mitigation, &c., after confirmation.

<sup>1</sup> A.A. 57A.

<sup>2</sup> A.A. 54 (4) (7) (8) (9).

<sup>3</sup> A.A. 53 (9); R.P. 53.

<sup>4</sup> R.P. 53.

<sup>5</sup> K.R. 665.

<sup>6</sup> R.P. 54 (C).

**Ch. V** of Procedure for that purpose.<sup>1</sup> But as this power cannot be exercised by an officer inferior to the authority who confirmed the sentence, an officer in the United Kingdom has no power to mitigate, remit or commute a sentence passed by a general court-martial in the United Kingdom except as regards sentences less than dismissal in the case of an officer and less than penal servitude in the case of a soldier. In the case of a court-martial held elsewhere, he can only do so if his command is not inferior to that of the officer who confirmed the sentence, unless in either case he acts under orders from superior authority.<sup>2</sup>

After confirmation a sentence of penal servitude, imprisonment or detention can, in appropriate cases, be suspended by a superior military authority under s. 57A of the Army Act.

*(xv) Execution and operation of sentences.*

Directions  
for execution  
of sen-  
tence.

**103.** An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he will, where necessary, obtain the approval required for a sentence of death as stated in para. 98, and in all cases will give the necessary directions for the execution of the sentence. If the sentence is approved by the King, these directions will be given by the Army Council.

Execution  
of sentences  
of penal  
servitude.

**104.** Sentences of penal servitude, wherever passed, are (except in the cases where para. 107 applies) required to be executed in the United Kingdom. Provision is made for bringing a military convict from any place out of the United Kingdom to a prison in the United Kingdom, and, when once he is there, he comes under the authority of the Secretary of State for the Home Department, but the military authorities may at any time remit any portion of the sentence.<sup>3</sup>

Execution  
of sentence  
of im-  
prisonment.

**105.** Sentences of imprisonment exceeding one year, wherever passed, are also (except where para. 107 applies) to be executed in the United Kingdom. A prisoner has to undergo his imprisonment either in a military prison or detention barrack or in other military custody or in a civil prison, or partly in one way and partly in another. He can, however, be temporarily confined in any other prison.<sup>4</sup>

Execution of  
sentence of  
detention.

**106.** Sentences of detention exceeding one year must (except where para. 107 applies) also be executed in the United Kingdom. Detention has to be undergone either in military custody or in a detention barrack, but a soldier sentenced to detention cannot be confined in a prison. In the United Kingdom sentences of detention may be undergone in a branch detention barrack or barrack detention rooms; but where they exceed 168 hours, should be carried out in a detention barrack.<sup>5</sup>

Further  
provision  
as to  
sentences.

**107.** An offender sentenced to penal servitude for an offence committed on active service may be ordered to undergo part of the sentence, not exceeding two years, in a military prison.<sup>6</sup>

<sup>1</sup> A.A. 57 (2); R.P. 126 (B).

<sup>2</sup> A.A. 57 (3). See also para. 91 above.

<sup>3</sup> A.A. 58-62; K.R. 676-679.

<sup>4</sup> A.A. 63-67; K.R. 680-715; and see for the mode in which a term of imprisonment is to be awarded, K.R. 654, and generally as to the disposal of military convicts, military prisoners and soldiers undergoing detention K.R. 674-714.

<sup>5</sup> A.A. 63; K.R. 715.

<sup>6</sup> A.A. 58 (proviso).

An offender sentenced to penal servitude, imprisonment or detention, need not be brought to the United Kingdom if he belongs to a class of persons with respect to whom the Secretary of State has declared that by reason of climate, or place of birth or of enlistment, it is not beneficial to the offender to transfer him to the United Kingdom; or if he enlisted in a colony, and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the governor of that colony that they may, if so sentenced, be transferred to or kept in the colony and there undergo sentence.

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An offender sentenced to imprisonment or detention need not be brought to the United Kingdom if the court or other prescribed authority for special reasons otherwise orders.<sup>1</sup>

108. A sentence of penal servitude, imprisonment or detention must be reckoned to commence on the day on which the original sentence (even if it was subsequently revised) was signed by the president of the court.<sup>2</sup> If, therefore, a sentence is ultimately confirmed and promulgated, it will probably have been running for several days although not yet put into actual execution. This would not, however, be the case if the operation of the sentence were suspended in accordance with s. 57A of the Army Act.

Date from which sentence operates.

109. After promulgation, court-martial proceedings must be forwarded for safe custody to the office of the Judge-Advocate-General in London, or of the Judge-Advocate-General in India (if the trial was in India), or, in the case of trials of men of the Royal Marines, to the Admiralty, where they must be preserved for not less than seven years in the case of a general court-martial or three years in the case of a district court-martial. The proceedings of a trial which has ended in an acquittal of the accused will be forwarded to the same authority.<sup>3</sup>

Custody of court-martial proceedings.

A copy of the proceedings must be supplied upon payment to any person tried by court-martial if he demands it.<sup>4</sup>

110. An officer or soldier who considers himself aggrieved by the finding or sentence of a court-martial may forward a petition to the confirming or any reviewing authority through the usual channels. If such petition raises any question of law it should, in the United Kingdom, be referred to the Judge-Advocate-General.<sup>5</sup>

Petition.

#### (xvi) *Field General Courts-Martial.*

111. The foregoing remarks have left out of notice a court-martial of an exceptional kind, termed a field general court-martial. This may be convened, without any warrant giving power to convene, by:

Field general court-martial, how and when convened.

- (a) any officer commanding a detachment or portion of troops abroad; or
- (b) the commanding officer of any corps or portion of a corps on active service; or
- (c) any officer in immediate command of a body of forces on active service.

<sup>1</sup> A.A. 89 and note 3; A.A. 94 (4) and note 9.

<sup>2</sup> A.A. 68 (1).

<sup>3</sup> R.P. 98.

<sup>4</sup> A.A. 124; R.P. 99.

<sup>5</sup> K.R. 666.

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If troops are not on active service, the power of convening a field general court-martial is limited to cases of offences committed by persons under the command of the convening officer and of offences against the person or property of some inhabitant of, or resident in, the country where the offence is alleged to have been committed.<sup>1</sup>

Powers and  
com-  
position.

112. A field general court-martial has the same power as a general court-martial, provided that the court is composed of at least three officers. If, in the opinion of the convening officer, three officers are not available two officers are legally sufficient, but a court consisting of two officers cannot award a sentence in excess of imprisonment.<sup>2</sup>

Every member of a field general court-martial should have held a commission for not less than one year<sup>3</sup>; the president may be of any rank, but, if practicable, must not be below the rank of captain.<sup>4</sup>

A sentence of death requires the concurrence of all the members.<sup>5</sup> An officer can be tried by a field general court-martial.

The provost-marshal, an assistant provost-marshal, the prosecutor or a witness for the prosecution must not be appointed as a member of the court.<sup>6</sup> In certain circumstances the convening officer may appoint himself president.<sup>7</sup>

The convening officer may appoint a judge-advocate.<sup>8</sup>

Rules of  
procedure.

113. A field general court-martial is subject to exceptional rules under which the procedure is or can be of a more summary character than that of an ordinary court-martial.<sup>9</sup> But provision is made whereby a large number of the rules which are applicable to district or general courts-martial should be applied to a field general court-martial so far as is practicable having regard to the public service.<sup>10</sup>

<sup>1</sup> A.A. 49; R.P. 105.

<sup>2</sup> A.A. 49 (1), (b), (d); R.P. 107 (A).

<sup>3</sup> R.P. 106 (C).

<sup>4</sup> A.A. 49 (1), (c).

<sup>5</sup> A.A. 49 (2).

<sup>6</sup> R.P. 106 (D).

<sup>7</sup> A.A. 49 (1), (c) R.P. 106 (B).

<sup>8</sup> R.P. 106 (E).

<sup>9</sup> See A.A. 49; R.P. 105-123.

<sup>10</sup> R.P. 121.

## CHAPTER VI

## EVIDENCE

*Introductory.*

1. The rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes. The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty, there is no question of fact involved in the trial; but if he does not, he raises two questions or issues: first, whether the facts charged against him happened; and next, if they did happen, what is their legal consequence.

Meaning of  
"Rules of  
Evidence."

2. In trial by jury, these two questions are answered by different persons. The jury, under the guidance of the judge, find the facts. The judge lays down the law. It was with reference to trial by jury that the English rules of evidence were originally framed, and it is to this mode of trial that they are still primarily applicable. They are, in fact, the rules in accordance with which a judge guides a jury. In trials before courts-martial, the members of the courts both find the facts and lay down the law, and thus perform the functions of both jury and judge. It therefore becomes their duty, when applying their minds to questions of fact, in the capacity of jurymen, to consider themselves bound by the rules which, in the case of an ordinary trial by jury, are laid down by the judge, and it is provided in s. 128 of the Army Act, that the rules of evidence to be adopted in proceedings before courts-martial shall be the same as those followed in civil courts in England. In deciding questions of law a court-martial should be guided by the advice of the judge-advocate (if a judge-advocate has been appointed) and should not disregard it except for very weighty reasons.<sup>1</sup>

English  
rules of  
evidence  
primarily  
applicable  
to trial by  
jury.

3. A jurymen is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing. The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evidence or documentary evidence. But the jury, or in the case of trial by court-martial the members of the court, may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence, and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence.<sup>2</sup>

Nature of  
evidence.

<sup>1</sup> R.P. 103 (f).

<sup>2</sup> A.A. 53 (7): R.P. 63 (B), 119 (D).

## Ch. VI

Difference  
between  
judicial and  
extra-judicial  
inquiries.

4. There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (*direct evidence*), and failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect evidence*). But in judicial inquiries the information given must be on oath, and be liable to be tested by cross-examination, and there are certain rules of law which exclude from the consideration of a jury particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements or documents so excluded are said to be "not admissible as evidence," or "not evidence."<sup>1</sup> And if a member of a court-martial is in doubt whether a statement or document which it is proposed to put before him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try, and, if he thinks that it has, then to consider whether it falls within any one of the negative or exclusive rules of law to which reference has been made above and which are more fully dealt with in para. 15 *et seq.*

Reasons for  
excluding  
certain  
classes of  
evidence in  
judicial  
inquiries.

5. The answer to the question why particular statements, verbal or written, should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following:—

1. It assists the jury.
2. It secures fair play to the accused.
3. It protects absent persons.
4. It prevents waste of time.

It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements or documents, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less remotely connected.

Evidence in  
courts-  
martial to  
be governed  
by English  
law.

6. As stated in para. 2 above, the rules of evidence to be followed by courts-martial are to be those adopted in courts of ordinary criminal jurisdiction in England.<sup>2</sup> These rules are to be found in the ordinary text-books on the subject, such as Taylor on Evidence,

<sup>1</sup> The two phrases illustrate the wider and narrower sense of the term "evidence." In its narrower sense it means that kind of evidence which is recognised by courts of law.

<sup>2</sup> A.A., 127 and 128; R.P., 73



Roscoe's Digest of the Law of Evidence in Criminal Cases, Stephen's Digest of the Law of Evidence, Wills' Theory and Practice of the Law of Evidence, and Phipson's Law of Evidence; but as only a limited number of these rules are from the nature of the case applicable to proceedings before courts-martial, it is thought that it may be useful to state and illustrate shortly the most important of those which are so applicable.

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7. The principal matters with which the rules of evidence are concerned may, for the purpose of this chapter, be classified as follows:—

Matters with which rules of evidence are concerned.

- (i) *What must be proved.*
- (ii) *What facts are assumed to be known* (judicial notice).
- (iii) *By which side proof must be given* (burden of proof).
- (iv) *What statements are admissible as evidence* (admissibility of evidence).
- (v) *Admissions and confessions* (when admissions or confessions may be admitted as evidence).
- (vi) *Who may give evidence* (competency of witnesses).
- (vii) *Privilege of witnesses* (what questions need not be answered and what documents need not be produced).
- (viii) *How evidence is to be given.*

(i) *What must be proved.*

8. What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment<sup>1</sup>; and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical, or a matter of correct legal description; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence.<sup>2</sup> The former class of cases is illustrated by the enactments providing that a person charged with felony may, in certain cases, be convicted of a misdemeanour; and that a person charged with stealing may be convicted of embezzlement, and *vice versa*. The second class is illustrated by the statutory enactment that on an indictment for wounding with intent to murder, if the prosecutor fails in proving the intent to murder, the accused may be convicted of unlawful wounding; and by the provisions contained in s. 56 (3), (4A), (4B), (4C), (5) of the Army Act.

Charge brought must be proved.

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage.<sup>3</sup> In

Substance only of charge need be proved.

<sup>1</sup> See R.P. 11-13 and 23.

<sup>2</sup> A.A. 56 (4), which allows a person charged with attempting to desert to be found guilty of desertion, cannot be placed under either of these heads of exceptions, but is in a class by itself.

<sup>3</sup> See R.P. 11-13 and 23, and as to particulars of time and place in the charge, see Note as to use of Forms of Charges (18)-(22), at the beginning of Appendix I to the Rules of Procedure.

**Ch. VI** — some cases, as in charges against a sentinel for misbehaviour on his post,<sup>1</sup> the time or place of the offence is material; but in many cases it is not so. Where the court think that the facts proved differ materially from the facts alleged in the statement of the particulars, but prove the same charge, they are empowered by Rule of Procedure 44 (D) to record a special finding, instead of a finding of "Not guilty."<sup>2</sup>

(ii) *What facts are assumed to be known.*

Judicial notice.

**10.** The court are said to take judicial notice, in other words not to require evidence, of any facts which are so generally known as not to require special proof.

Matters of which judicial notice will be taken.

**11.** By Rule of Procedure 74 the court are expressly authorised to take judicial notice of all matters of notoriety, including all matters within their general military knowledge. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.<sup>3</sup> Again, it would not be necessary to prove that an important battle was fought on the 18th June, 1815. Among the matters of which it is the duty of all judges to take judicial notice may be mentioned:—Acts of Parliament: the general course of proceedings and privileges of Parliament, the date and place of the sittings of each House, but not transactions in their journals; the course of proceedings and rules of practice in the Supreme Court of Judicature; the accession of the King; the existence and title of every State and Sovereign recognised by the King; the Great Seal, the Privy Seal, the Seals of the Superior Courts of Justice; the seal of any notary-public in the British dominions, and various other seals; the extent of the territories under the dominion of the Crown, and the territorial and political divisions of the different parts of the United Kingdom; the ordinary course of nature, natural and artificial divisions of time, and the meaning of English words; and all other matters which they are directed by any statute to notice. Judicial notice will also be taken of the fact that the country is at war.

(iii) *By which side proof must be given.*

Burden of proof.

**12.** In considering the question of "the burden of proof" (or *onus probandi*) regard must be had to two rules: *first*, that every man is presumed to be innocent until he is proved to be guilty; and, *second*, that he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms.<sup>4</sup> It follows that it is incumbent on the prosecution to give evidence showing the commission of the offence, and connecting the accused therewith.

<sup>1</sup> See A.A. 6 (1) (h), 6 (2) (e).

<sup>2</sup> See especially note 6 to R.P. 44.

<sup>3</sup> See A.A. 6 (3) (c), 8, 10 (3), 17 and 25 (1), as illustrations of matters which would be presumed to be within the general military knowledge of an officer.

<sup>4</sup> Except when a statute provides expressly that proof of an exception, &c., must be given by the accused (see para. 13).

13. When the prosecution have thus proved a *prima facie* case, "Shifting" it is not infrequently said that the burden of proof "shifts" of the burden. on to the accused. This expression, however, is very misleading. There are certain statutes which expressly provide that the proof of lawful excuse, or authority, or the absence of fraudulent intent, shall lie on the person charged (although by the terms in which the offence is defined they are made elements of the offence), as, for example, in the statute making it a criminal offence to be found by night in the possession of housebreaking implements without lawful excuse, "the proof whereof shall lie on such person."<sup>1</sup> In such cases it is correct to say that after proof of the possession is once given, the burden "shifts": in other words, a judge would direct a jury that they *ought* to convict unless the accused proves to their satisfaction that he had lawful excuse. Again, the burden may be "shifted" by some rebuttable "presumption of law," e.g., that all homicide is murder until malice, express or implied, is disproved.

On the other hand, where the evidence raises a strong presumption of guilt, but such presumption is one "of fact," it is not, strictly speaking, correct to say that the burden "shifts." For instance, A is accused of stealing a purse, and the prosecution prove that immediately after its loss it was found in A's possession. There is obviously a strong presumption that he stole it, and, as a matter of common sense, not one jury in a thousand would acquit him, if he offered no explanation (or no reasonable explanation). And the law recognises this by saying that upon proof of "recent possession" of stolen goods a jury *may* convict if no satisfactory explanation is offered. Still, in law, the burden remains on the prosecution to the end, and it would be improper to direct a jury that they *ought* to convict.<sup>2</sup>

There are certain cases where the subject matter of some allegation made by the prosecution is peculiarly within the knowledge of the accused, e.g., in charges for leaving a post without orders, releasing a person without authority, absence without leave, &c. In such cases "the court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the parties respectively."<sup>3</sup> Such evidence as the prosecution may be in a position to give—including inferences from the conduct of the accused—may be accepted as justifying a conviction in the absence of explanation by the accused.

14. As stated above, on a charge of murder the law presumes malice from the act of killing, and requires the accused to disprove the malice. But intention is not capable of positive proof; it can only be inferred from overt acts. Proof of intent.

As a general rule a person is presumed in law to have intended the natural and probable consequences of his act.

(iv) *What statements are admissible as evidence.*

15. It has been remarked above that there are certain rules which exclude from consideration on judicial inquiries classes of Rules as to admissibility of evidence.

<sup>1</sup> Larceny Act, 1916, s. 28 (2).

<sup>2</sup> *R. v. Badash* [1917] 13 Cr. App. Rep. 17. *R. v. Brain* [1918] 13 Cr. App. Rep. 197.

<sup>3</sup> Steph., Dig. Ev. art. 96; Phipson 6th Ed. p. 36.

**Ch. VI** evidence which would be taken into consideration on ordinary inquiries. The most important of these negative or exclusive rules may, with reference to criminal proceedings, be stated as follows :—

- Rule of relevancy.** I. Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge.
- Rule of best evidence.** II. The evidence produced must be the best obtainable under the circumstances.
- Hearsay.** To these may be added, subject to important qualifications :—
- Opinion.** III. Hearsay is not evidence.
- IV. Opinion is not evidence.

**I. Rule of relevancy.** 16. The form in which the first rule is expressed shows the vagueness, and, it may be added, the necessary vagueness, of its character. What classes of facts "tend immediately" to prove or disprove a charge? Or, to use a more technical expression<sup>1</sup>, what facts are "relevant"? To this question no direct answer can be given. No precise line can be drawn between "relevant" and "irrelevant" facts. All that can be done is to state certain subordinate rules illustrating the kind of line which experience has induced courts to draw with respect to particular classes of facts. Common sense must supply the rest.

**Character not evidence for prosecution.** 17. In the first place the character or general reputation of the accused person is not admissible as evidence of his guilt. This rule is most important to prevent the injustice which might arise from prejudice or unpopularity. "Give a dog a bad name and hang him," represents the popular instinct. "A man shall not be convicted because he has a bad name," says the law. For this reason the prosecutor may not (before conviction) give evidence of bad character, except to rebut evidence to a contrary effect given on behalf of the accused.<sup>2</sup>

**Character admissible as evidence for defence.** 18. On the other hand, the accused may call witnesses to speak generally as to his character. The evidence, however, of such witnesses should be confined to the reputation of the accused for good character generally or for his good character in special respects—*e.g.*, for honesty, bravery, &c.; evidence of particular cases of praiseworthy conduct in the accused is not properly admissible. This general reputation for good character may be evidenced by showing that the record of the accused in the conduct book is good, or that his superior officers have publicly approved of the way in which he has conducted himself while in the service.

**Effect of evidence as to character.** 19. Evidence of general good character cannot avail the accused against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence, and proved good character should be taken into consideration with all the other facts and circumstances "not as positive evidence contradicting any that has been brought on the other side, but as testimony, probably, to induce the court to doubt whether the other evidence is correct and not to discard that evidence if the court thinks that it is so."<sup>3</sup>

<sup>1</sup> See R.P. 73 (A).

<sup>2</sup> See R.P. 86 (C). The court may, after conviction, for their guidance in determining the sentence, take evidence as to the character of the accused (R.P. 46).

<sup>3</sup> *R. v. Bliss Hall* [1918], 13 Cr. App. Rep. 125.

On a charge of murder, where malice is the essence of the crime, expressions of goodwill and acts of kindness by the accused towards the deceased are always considered important evidence, as showing what was his general disposition towards the deceased, and leading to the conclusion that his intention could not have been that imputed to him. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance. But it would be manifestly absurd on a charge of stealing, to allow character for bravery to weigh in the scale of proof, or, on a charge of cowardice, to be biased by a character for honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused, by influencing the superior with whom it rests to mitigate or remit the sentence.

20. It is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those included in the charge against him for the purpose of leading to the conclusion that he is a person likely from his conduct or character or disposition to have committed the offences for which he is being tried. Thus, on a charge of murder, the prosecutor cannot give evidence of the conduct of the accused in respect of other persons for the purpose of proving a blood-thirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct.<sup>1</sup>

Evidence of similar acts. When not admissible.

21. The mere fact that evidence adduced tends to show the commission of other criminal acts (whether prior or subsequent to the act charged) does not render it inadmissible if it is relevant to an issue before the court, and it may be so relevant if it bears on the question whether the acts alleged to constitute the offence charged were designed or accidental, or to rebut a defence which would otherwise be open to the accused.<sup>2</sup> In such cases the evidence of other transactions being in some way relevant to the issue is admissible, not because it tends to show that other offences have been committed by the accused, but notwithstanding that it may happen to do so.<sup>3</sup>

When admissible.

It is impossible to give anything like a detailed catalogue of circumstances in which evidence of the kind may be relevant to some issue before the court, and cases upon the point are constantly arising in criminal courts. A few of the leading decisions are referred to in the following paragraphs. It may be laid down as a rule of prudence that such evidence should only be admitted where no serious doubt is felt as to its admissibility, for if it be held to have been wrongly admitted a resulting conviction will

<sup>1</sup> See, however, below, para. 96.

<sup>2</sup> *Mahin v. A.G. for New South Wales*, L.R. [1894] A.C. 57.

<sup>3</sup> *R. v. Ollie*, L.R. [1900], 2 Q.B. 758.

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usually be quashed: further, where it is intended to "rebut a defence"—e.g., accident, absence of malice, absence of guilty knowledge, &c.,—it should not be tendered, or even "opened" to the court, until the defence in question is definitely put forward by the accused.<sup>1</sup>

Where several offences connected, evidence of one admissible as proof of another.

22. Where several offences are so connected with each other as to form part of one entire transaction, evidence of one is admissible as proof of another. On a charge of stealing, for example, though it is not material in general to inquire into any other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the thief, it may be very relevant and therefore admissible to show that other goods which had been upon the same premises and were stolen on the same night were afterwards found in the possession of the accused. This is strong evidence of the accused having been near the owner's house on the night of the robbery. So, too, on a charge of arson, it may be shown that property which had been taken out of the house at the time of the firing was afterwards found secreted in the possession of the accused.

To prove design, and negative accident, &c.

23. The following are instances of cases where evidence of similar acts has been admitted to prove design, or intention, or a systematic course of conduct, or to negative ignorance or accident, &c. On charges of murder or of maliciously wounding, former menaces or attacks or expressions of vindictive feeling against the same person are admissible as disproving accident. Again, where women or children have been murdered, to rebut the defence of accident or to prove design, evidence has been admitted to prove that other women or children living with the accused have died under similar suspicious circumstances, or have suffered from similar symptoms.<sup>2</sup>

On charges of embezzlement effected by falsifying accounts, evidence of other incorrect entries in the prisoner's accounts has been admitted to show that particular errors covered by the actual charge were not made accidentally.<sup>3</sup>

On charges of "receiving," evidence may by statute<sup>4</sup> be given that other property stolen during the preceding 12 months was found in the possession of the accused, to prove his guilty knowledge. Upon charges of uttering forged notes or counterfeit coin evidence has been admitted to prove the uttering on other occasions of notes or coins which were not genuine, or the possession thereof.<sup>5</sup>

Where the gist of an alleged attempt is fraud, evidence of similar<sup>6</sup> offences is admissible to prove the intent. Thus on a charge of obtaining cash by falsely representing that the cheque given in exchange was good, in order to prove intent or knowledge, evidence was admitted as to another cheque (dishonoured on presentation) having been given to a third person.<sup>7</sup>

<sup>1</sup> *R. v. Bond*, L.R. [1906] 2 K.B. 389. Under R.P. 86 (B) the court can allow rebutting evidence to be called after the witnesses for the accused.

<sup>2</sup> *R. v. Geering* [1849] 18 L.J. (M.C.) 218, several cases of arsenic poisoning in a house. *Makin v. A.G. for New South Wales* L.R. [1894] A.C. 57; previous deaths of other nurse children. *R. v. Smith* [1915] 11 Cr. App. Rep. 229, three "wives" dying in succession in the same way.

<sup>3</sup> *R. v. Richardson* [1880] 8 Cox Crim. Ca. 448; *R. v. Proud* [1881] 31 L.J. (M.C.), 71.

<sup>4</sup> Larceny Act, 1916, s. 43 (1) (a).

<sup>5</sup> Archbold, Crim. Ev., 27th Ed., 366.

<sup>6</sup> But the frauds must be of a similar nature, cf. *R. v. Fisher* L.R. [1910] 1 K.B.

<sup>7</sup> *R. v. Ollis* L.R. [1900] 2 Q.B., 758.

Again, on a charge of obtaining credit (for food and lodgings) by fraud, evidence was admitted to show that the accused had previously obtained accommodation at other houses and had left without making payment, either to prove a systematic course of conduct, or as negating any mistake or honest motive.<sup>1</sup>

On a charge of arson where the object suggested was to defraud an insurance company, the prosecution was allowed to prove, as negating an accidental cause for the fire, that the two houses previously occupied by the prisoner were burnt, and that claims in respect of them had been paid by other companies.<sup>2</sup> Similarly, to prove malice or intent, or to negative accident, where men have been charged with maliciously wounding or arson, evidence has been admitted to show that on a previous occasion the accused had shot at the same person or tried to set fire to the same object.<sup>3</sup>

24. On a charge of gross indecency, where the defence was mistaken identification and an *alibi*, the prosecution were allowed to prove that indecent photographs and articles suggestive of a tendency to commit such offences were found on the prisoner when arrested, and in his house. The ground for this decision was that the person who committed the offence was a person of abnormal propensities, and that the evidence corroborated the identification by showing that the person picked out had those propensities.<sup>4</sup> In a similar case where the defence was not in the nature of *alibi* it was held that evidence of possession of indecent photographs was admissible on the same principle as evidence of possession of tools in cases of housebreaking.<sup>5</sup> On charges of incest and of carnal knowledge of young girls evidence of former similar acts between the same parties has been admitted.<sup>6</sup>

Other instances.

Again, on a charge of indecent exposure, evidence of a previous act towards the same person was admitted as relevant on the question of identification and on the question of intent to insult.<sup>7</sup>

25. In support of a charge of insubordinate language addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the accused, may prove also that he spoke or wrote either disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the offence charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge.

Facts showing intention (further illustration).

26. Where the charge is of a nature which makes the intention a principal issue, as where a person is charged with treason, or with a design to undermine the influence of the commanding officer, an inquiry may be allowed into the conduct and sentiments of the accused on particular occasions, but with reference only

Facts showing intention (further illustration).

<sup>1</sup> *R. v. Wyatt* L.R. [1904] 1 K.B., 188; *R. v. Walford* [1907] 71 J.P., 215. See also *R. v. Bond* L.R. [1906] 2 K.B., 389 as to "course of conduct."

<sup>2</sup> *R. v. Gray* [1886] 4 F. & F., 1102.

<sup>3</sup> *R. v. Dosselt* [1846] 2 C. & K., 306. Archbold, Crim. Ev., 27th Ed., 366.

<sup>4</sup> *R. v. Thompson* L.R. [1918] A.C. 221.

<sup>5</sup> *R. v. Twiss* L.R. [1918] 2 K.B., 853.

<sup>6</sup> *R. v. Ball* L.R. [1911] A.C. 47; *R. v. Shallaher* L.R. [1914] 1 K.B. 414.

<sup>7</sup> *Perkins v. Jeffery* L.R. [1915] 2 K.B. 702.

**Ch. VI** — to the overt act laid or specified in the charge, and to the transactions proved against him. The intention of one particular act may be best evinced by other contemporaneous actions, but great caution is needed to prevent injustice to the accused by extending the inquiry to matters wholly unconnected with the charge. It would be the height of injustice to allow such an attack upon him as might involve the necessity of his entering unprepared and at once on the defence of every action of his life.

Evidence as to motive, preparation, subsequent conduct, or consequences admissible.

27. Again, where there is a question whether a person committed an offence, evidence may be given of any fact supplying a motive or constituting preparation for the offence, of any subsequent conduct of the person accused, which is apparently influenced by the commission of the offence, and of any act done by him, or by his authority, in consequence of the offence. Thus, evidence may be given that, after the commission of the alleged offence, the accused absconded, or was in possession of the property, or the proceeds of property, acquired by the offence, or that he attempted to conceal things which were or might have been used in committing the offence, or as to the manner in which he conducted himself when statements were made in his presence and hearing.

Acts of conspirators.

28. In cases of conspiracy, after *prima facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, the charge against one conspirator may be supported by evidence of anything done, written, or said, not only by him, but by any other of the conspirators, in furtherance of the common purpose. Thus, on the consideration of a charge of mutiny, evidence of this kind may, after such *prima facie* proof, be received against a particular one of the accused.

Statements not forming part of conspiracy inadmissible.

29. Statements of the class above described are admissible as evidence, if they are made in execution of the common purpose, because they form part of the transaction to which the inquiry relates.<sup>1</sup> But a statement made by one conspirator, not in execution of the common purpose, but in narration of some event forming part of the conspiracy, falls within the rule of hearsay, to which reference will be made hereafter, and is not admissible as evidence against another conspirator, unless made in his presence.<sup>2</sup> In consequence of this distinction, the admissibility of writings often depends on the time when they are proved to be in the possession of fellow conspirators, whether it was before or after the apprehension of the accused or whether or not the accused had joined the conspiracy at the date referred to.

Acts and declarations of accused: when evidence for him in conspiracy cases.

30. As, in trials for conspiracies, whatever the accused may have done or said at any meeting alleged to have been held in pursuance of the conspiracy may be given in evidence against him on the part of the prosecution, so, on the other hand, any other part of his conduct at the same meeting will be allowed to be proved in his behalf: for his intention and design at a particular time are best explained by a complete view of every part of his conduct at that time, and not merely from the proof of a single isolated act or declaration.

<sup>1</sup> See below, paras. 51, 52.

<sup>2</sup> See *R. v. Blake* [1844] L.R., 6 Q.B., 126; Steph. Dig. Ev., pp. 6 and 7; Wills, p. 116 et seq.



31. The meaning of the rule that the evidence produced must be the best obtainable in the circumstances, is this :—No evidence which leads to the supposition that other and better evidence remains behind can have any weight, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence.

II. Rule as to best evidence.

32. The rule in question is more strictly enforced with regard to documentary evidence than with regard to oral evidence, and is usually applied in the form of the two well-known sub-rules :

Rule chiefly applicable to documents.

(1) That a verbal account of the contents of a document can never be received if the document itself is obtainable: (2) That, subject to certain exceptions, a copy of a document is not admissible when the original document can be produced. In these cases the document itself is said to be primary, whilst the verbal account, or the copy, is called secondary evidence.

Primary and secondary evidence.

33. Primary evidence of the contents of a document is given by producing the document for the inspection of the court.

Primary evidence of document.

If the document is of a kind which is required by law to be attested, but not otherwise,<sup>1</sup> it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions :—

Attested and unattested documents.

(a) If it is proved that there is no attesting witness alive, and capable of giving evidence, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(b) If the document is proved, or purports to be, more than thirty years old, and is produced from what the court consider to be its proper custody, an attesting witness need not be called, and it will be presumed without evidence that the instrument was duly executed and attested.

34. The rule as to the inadmissibility of a copy of a document is applied much more strictly to private than to public or official documents.

Distinction between private and public documents.

35. Secondary evidence may be given of the contents of a private document in the following cases :—

Secondary evidence of private documents, when admissible.

(a) Where the original is shown or appears to be in the possession of the adverse party, and he, after having been served with reasonable notice to produce it, does not do so.

(b) Where the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and he, after having been served with a writ of *subpoena duces tecum*, or after having been sworn as a witness and asked for the document, and having admitted that it is in court, refuses to produce it.

(c) Where it is shown that proper search has been made for the original, and there is reason for believing that it is destroyed or lost.

<sup>1</sup> Evidence Act, 1868, ss. 1, 7.

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- (d) Where the original is of such a nature as not to be easily movable,<sup>1</sup> or is in a country from which it is not permitted to be removed.
- (e) Where the original is a document for the proof of which special provision is made by any Act of Parliament, or any law in force for the time being.<sup>2</sup>
- (f) Where the document is an entry in a banker's book, provable according to the special provisions of the Bankers' Books Evidence Act, 1879.

Secondary evidence of private documents, how given.

Secondary evidence of a private document is usually given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the document, and can give an account of its contents.

Letters : proof of receipt.

36. Where there is no relevant statutory provision applicable to the particular case<sup>3</sup> a letter proved to have been properly addressed, stamped and posted (and not returned by the P.O.), is presumed to have been delivered in due course. The presumption may be rebutted ; and if receipt is denied, it is for the court to decide whether to accept the denial.

Public documents, what deemed to be.

Primary and secondary evidence of public documents.

37. No general definition of " public documents " is possible, but the rules of evidence applicable to public documents are expressly applied by statute to many classes of documents. Primary evidence of any public document may be given by producing the document from proper custody, and by a witness identifying it as being what it professes to be. Public documents may always be proved by secondary evidence, but the particular kind of secondary evidence required is in many cases defined by statute. Where a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible as proof of its contents, if it is proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted.<sup>4</sup>

Certified copies.

38. It is provided by many statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable as evidence of certain particulars in courts of justice, if they are authenticated in the manner prescribed by the statutes. Whenever, by virtue of any such provision, any such certificate or certified copy is receivable as proof of any particular in any court of justice, it is admissible as evidence, if it purports to be authenticated in the manner prescribed by law, without calling any witness to prove any stamp, seal, or signature required for its authentication, or to prove the official character of the person who appears to have signed it.<sup>5</sup>

<sup>1</sup> E.g., a placard posted on a wall, or a tombstone.

<sup>2</sup> These are practically treated on the same footing as public documents. See A.A. 168.

<sup>3</sup> E.g., Reserve Forces Act, 1882, s. 24 (2).

<sup>4</sup> Evidence Act, 1851, s. 14 ; Law of Property Act, 1922, s. 144.

<sup>5</sup> Evidence Act, 1845, preamble, and s. 1, and Steph. Dig. Ev., art. 79. A certificate, &c., so receivable is merely handed in to the court by the party producing it.

39. Under s. 2 of the Documentary Evidence Act, 1868, *prima facie* evidence of any proclamation, order, or regulation issued by His Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act,<sup>1</sup> may be given in all courts of justice, and in all legal proceedings, whatsoever, in all or any of the following modes :—(1) By the production of a copy of the *Gazette*, purporting to contain the proclamation, order, or regulation : (2) By the production of a copy of the proclamation, order, or regulation purporting to be printed by the Government printer,<sup>2</sup> or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of that colony or possession : (3) By the production, in the case of any proclamation, order, or regulation issued (i) by His Majesty, or the Privy Council, or (ii) by any of the departments specified in the schedule, of a copy or extract purporting to be certified as true either (a) by the clerk or any Lord of the Privy Council, or (b) by the proper certifying officer specified in the second column of the schedule.

Provisions of Documentary Evidence Act as to certain documents.

Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing ; and no proof is required of the handwriting or official position of any person certifying in pursuance of the Act, to the truth of any copy or of extract from any proclamation, order, or regulation.

40. Special provision is made by the Army Act for proving, by means of copies, attestation papers on enlistment, King's Regulations, Royal Warrants, and rules, warrants, and orders made in pursuance of the Act, records in regimental books, and proceedings of courts-martial.<sup>3</sup>

Special provisions of Army Act as to documents provable by copies.

41. In connection with the rule as to best evidence, reference may be made to the distinction between direct and indirect evidence. \* By direct evidence is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question. By indirect, or, as it is often called, circumstantial evidence, is meant evidence of facts, from which the fact in question may be inferred or presumed. The rule as to best evidence has no application to the difference between direct and indirect evidence. Direct evidence is not better than indirect or circumstantial evidence, the difference between them being one not of *degree* but of *kind*.

Rules as to best evidence not applicable to distinction between direct and indirect evidence.

42. From the circumstances in which crimes are ordinarily committed, it follows that direct evidence of their commission is not always obtainable, and that in very many cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it ; for it has become a proverb that " facts cannot lie," whilst witnesses may. On the other hand, it must always be borne in mind that if facts cannot " lie," they may, and often do, deceive ; in other words, that the interpretation which they appear to

Nature and strength of circumstantial evidence.

<sup>1</sup> This schedule has by the Documentary Evidence Act, 1895, and subsequent enactments been extended so as to include practically all Government departments.

<sup>2</sup> Under the Documentary Evidence Act, 1882, this expression includes His Majesty's Stationery Office.

<sup>3</sup> A.A., 168, 168.

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Illustrations of difference between good and bad circumstantial evidence.

suggest is not that which ought to be placed upon them. Therefore, before the court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person.<sup>1</sup>

43. The writer of a series of papers on the value and danger of circumstantial evidence, which appeared in 1879 in a legal paper<sup>2</sup>, states one of the leading rules with respect to this class of evidence as follows :—“ *The facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime,*”—and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contains this illustration :—

“ In one of the works on evidence there is an admirable example of a series of circumstances such as are intended to be excluded by this rule, which we take the liberty of epitomising :—

“ 1. The accused was a man of bad general character.

“ 2. He belonged to a nation characteristically regardless of human life.

“ 3. He narrowly escaped conviction on a charge of murder some years before.

“ 4. There is a strong ill-feeling between his nation and that of the deceased.

“ 5. He was heard to make exclamations in his sleep indicating a consciousness of having committed some terrible deed.

“ 6. The deceased was robbed, and the accused is proved to be notoriously greedy about money.

“ It is scarcely necessary to say that, if a series of such circumstances were indefinitely accumulated, it would fail to produce in a sane mind a conviction that the accused was guilty. There is no visible *ligamen* between these facts and the facts sought to be established that the accused committed the murder, as all the facts are perfectly consistent with his innocence. Contrast such circumstances with such as ordinarily present themselves in strong cases of circumstantial evidence. Let us take, for instance, the following series of facts :—

“ 1. The deceased was found apparently murdered by a pistol bullet, which penetrated the skull.

“ 2. On the ground near the body was found a small fragment of a newspaper, which smelled strongly of burnt powder, and led to the supposition that it had been used in separating the powder from the ball; and on the accused being arrested there was found another piece of newspaper, which corresponded minutely at the point where it was torn with that found near the body of the deceased.

“ 3. In a pond near the scene of the murder was found a pistol, which had evidently been only recently thrown into the water, and into which the bullet fitted.

<sup>1</sup> *Hodge's case* [1838], 2 Lewin, C.C., 227.

<sup>2</sup> *Law Journal*, Oct. 11, 1879.

" 4. The pistol was proved to have belonged to a gentleman in the neighbourhood ; but it also appeared that the prisoner was a servant in his employment, and that the pistol was missed the day before the murder from among several fowling pieces, pistols, powder flasks, and other articles connected with the paraphernalia of the sportsman which were arranged in a small room in the gentleman's house devoted to the purposes of sport. It was a part of the prisoner's duty to keep this room and its contents in order.

" 5. When asked whether he ever saw the pistol, he denied it.

" On the prisoner were found two bank notes, which were proved to have been given to the deceased in part payment for a horse sold by him to a neighbour.

" The first of these facts at once suggests suspicion against the accused. As the second and subsequent circumstances are disclosed, the suspicion becomes intensified ; and, as the narrative goes on, the strong apparent connection between the facts and the crime rapidly culminates, until, even before the last of them is reached, the climax of moral certainty is attained, and the mind is forced to accept the conclusion that the accused was the perpetrator of the crime."

44. The rule which requires production of the best obtainable evidence does not require the strongest possible assurance ; in other words, does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact. For instance, it is not necessary, in order to prove handwriting, to call the writer himself ; nor, if a whole regiment should be present at some overt act of mutiny or insubordination, as the striking of a commanding officer in front of his regiment, would the law require the production of all the persons present ; for if one witness only were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced.

Best evidence does not mean strongest possible assurance.

45. On the same principle the law admits as sufficient the uncorroborated testimony of one credible witness, subject to statutory exceptions in the case, *e.g.*, of treason, procurement of women and girls,<sup>1</sup> and in certain cases where a child of tender years is allowed to give evidence without being sworn ;<sup>2</sup> and to the further exception that in a trial for perjury one witness alone is not sufficient, without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged.<sup>3</sup> Apart from any such statutory requirement the evidence even of an accomplice is in strict law sufficient, if the jury consider him credible ; but it is now held to be the duty of the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated evidence of an accomplice and, in his discretion, advise them not to do so, though at the same time pointing out that it is within their legal province to convict upon it if they choose. In a trial by court-martial, where

Number of witnesses requisite.

<sup>1</sup> Criminal Law Amendment Act, 1885, ss. 2 and 3.

<sup>2</sup> Children Act, 1908, s. 30 as amended by the Criminal Justice Administration Act, 1914, s. 28 (2). See also para. 90 *post*.

<sup>3</sup> Perjury Act, 1911, s. 13.

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III. Rule as to hearsay.

46. The rule as to best evidence says that second-best evidence shall not be produced if better evidence can be found. The rule as to hearsay goes a step further, and says that certain classes of second-best evidence shall not be produced in any circumstances. The term "hearsay" is primarily applicable to what a witness has heard another person say with respect to facts in dispute. But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statements, but by persons to whose knowledge the statements have been brought. The reasons for excluding such statements are, first, that they are not made on oath; and, secondly, that the person to be affected by the statement has no opportunity of cross-examining its author. The rule has been often criticised on the ground that it sometimes excludes the only means of proof obtainable in the circumstances; but its utility in excluding irresponsible proof is obvious.<sup>2</sup> It is subject to various limitations or exceptions, the most important of which will be noticed below.

Its terms and exceptions.

47. The rule as to hearsay in its narrower sense may be stated as follows:—"No statements with reference to a person charged with an offence, relative to the charge, made in his absence can be received in evidence against him." This rule is subject to several exceptions: first, the admissibility of so-called "dying declarations"; secondly, the admissibility of statements forming part of what is known by the name of the "*res gesta*"—that is to say, of the fact, or set of facts, or transaction forming the subject of judicial inquiry; thirdly, the admissibility of statements made by a deceased person against his pecuniary or proprietary interest; and, fourthly, the admissibility of statements made by a deceased person in the strict course of duty.

Statement made in presence of accused.

48. It will be observed that the rule does not exclude evidence as to statements made in the presence of the accused. A statement made in a man's presence and hearing accusing him expressly or impliedly of having committed a crime is evidence against him of the truth of the allegation or suggestion so far, but only so far, as by words or demeanour (including his silence if the occasion calls for a reply<sup>3</sup>) he accepts the statement so as to make it his own. In strict law the prosecution may put such statement before the jury, together with evidence of the accused's behaviour on hearing it—even if such behaviour was a plain denial—and

<sup>1</sup> *R. v. Basherville* L.R. [1916] 2 K.B. 658.

<sup>2</sup> "Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumour or anything stated as a mere hearsay."—James, L. J., in *Polini v. Gray* [1879], L.R., 12 Ch. Div. at p. 425.

<sup>3</sup> *R. v. Norton* L.R. [1910], 2 K.B. 496; *R. v. Feigenbaum* L.R. [1919], 1 K.B. 481.

leave them to judge whether he accepted it; but in practice, judges do not allow such a statement to be proved unless they see some evidence that the accused did accept it. In a trial by court-martial, if the accused when he heard the statement made merely denied it, or said or did nothing which could reasonably be construed as an acceptance of it, the court should reject the whole of the statement, and pay no attention to it.<sup>1</sup>

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49. The first of the exceptions above referred to is that relating to dying declarations, which are admissible only in trials for murder or manslaughter. In such trials a declaration made by the person killed as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible as evidence, if it is proved that the declarant, at the time of making the declaration, had abandoned all hope of living and was expecting to die within a very short time though not necessarily immediately. "Dying declarations ought to be admitted with scrupulous, I had almost said with superstitious, care. They have not necessarily the sanction of an oath; they are made in the absence of the prisoner; the person making them is not subject to cross-examination, and is in no peril of prosecution for perjury. There is also great danger of omissions and of misrepresentations, both by the declarant and the witness. To make a dying declaration admissible, there must be an expectation of impending and almost immediate death from the causes then operating. The authorities show that there must be no hope whatever."<sup>2</sup>

Dying declarations.

Dying declarations are only admissible in evidence where the death of the deceased is the subject of the charge and the cause of the death is the subject of the dying declaration.

50. The circumstances in which, at trials for murder, statements by the person alleged to have been murdered as to the cause of his death are and are not admissible as evidence against the accused, may be illustrated by the following cases:—

Dying declarations, illustration of rule.

- (a) At the time of making the statement the deceased had no hope of recovery, though his doctor had, and he lived ten days after making the statement. The statement was admitted as evidence.<sup>3</sup>
- (b) The deceased, at the time of making the statement, which was written down, said something which was taken down thus: "I make the above statement with the fear of death before me, and with no hope of recovery." On the statement being read over, she corrected this to "with no hope at present of my recovery." She died thirteen hours afterwards. The statement was not admitted as evidence.<sup>3</sup>

51. Passing to the second of the exceptions referred to in para. 47 above, the rule is, that where a statement is part of the *res gestæ* or transaction constituting the offence, then, whether it is or is not made in the presence of the accused, it is admissible

Statement forming part of *res gestæ*.

<sup>1</sup> *R. v. Christie* L.R. [1914], A.C. 545. See also para. 83 *post* as to a confession made by an accomplice in the presence of the accused, and also para. 78 as to the duty of police officers in such cases.

<sup>2</sup> *R. v. Jenkins* [1868], L. R. 1 C. C. R. at p. 193, *per* Byles, J.

<sup>3</sup> *R. v. Mealey* [1825], 1 Moo C. C. 97.

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Principle  
on which  
admitted,

Special rule  
in case of  
trials for  
rape and  
kindred  
offences.

Statements  
as to bodily  
or mental  
feeling  
admissible.

Declaration  
of deceased  
person  
against  
interest.

Statements  
made in  
course of  
business by  
person since  
deceased,

as evidence against him. Words uttered during the continuance of the main action, whether by the active or by the passive party, though they cannot amount to acts for which the accused can be held responsible, yet may so qualify or explain the acts which they accompany, that they become essential for the due appreciation of them. Even where the accused is no longer present, if the words are the immediate and natural effect and consequence of continuing action on his part, they may well be considered as part of the transaction though uttered out of his hearing.

52. There is no difficulty in understanding the general principle on which such statements are admitted, but there is sometimes great practical difficulty in determining how long the "transaction" ought to be considered as continuing, and what ought to be treated as "the immediate and natural effect of continuing action." Speaking generally a statement cannot be admissible in evidence as part of the *res gestæ* unless it was made while the offence was being committed or so immediately thereafter that the person making it had no time to devise anything for his own advantage.<sup>1</sup>

53. In trials for rape, and kindred offences against women and girls, evidence is allowed to be given of the fact that, shortly after the commission of the offence, the person against whom the offence was committed made a complaint about it, and of the particular terms of the complaint so far as they relate to the charge. This is admissible, not as being evidence of the facts complained of, but for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness box.<sup>2</sup>

The rule as to the admissibility in evidence of such a complaint and of its terms has been held to apply where the charge was one of indecent offences with male persons.<sup>3</sup>

54. When it is intended to prove the state of health of a person at a particular time, evidence may be given of expressions indicative of that state used by him at that time.<sup>4</sup> Thus, in the Rugeley poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the accused.

55. As regards the third exception referred to in para. 47, a declaration, written or oral, made by a person since deceased against his pecuniary or proprietary interest is admissible.<sup>5</sup> If it is admitted, the whole of the statement of which it forms part becomes admissible. The expressions "pecuniary or proprietary" must be strictly construed, and a declaration is not "against interest" within the meaning of the rule because, *e.g.*, it would have tended to show that he had committed a crime.

56. As regards the fourth exception, a statement, written or oral, or an entry, which it is the duty of a person to make in the ordinary course of his business or professional employment, is

<sup>1</sup> *R. v. Christie* L.R. [1914], A. C. 545. *Thompson v. Trevanion* [1893], Skin. 402.

<sup>2</sup> *R. v. Lillyman* L.R. [1896], 2 Q.B. 167; *R. v. Osborne* L.R. [1905], 1 K.B. 551.

<sup>3</sup> *R. v. Camilleri* L.R. [1922], 2 K.B. 122; *R. v. Wannell* [1922], 17 Cr. App. Rep. 53.

<sup>4</sup> Steph., Dig. Ev., art. 11.

<sup>5</sup> Steph., Dig. Ev., art. 28.



admissible as evidence after his death, provided it is made contemporaneously with the act to which it relates. But it is only admissible to prove those facts which it was the duty of the person making the statement or entry to include in it, and of which he had personal knowledge. Thus, where on a trial for murder it appeared that the deceased, a constable, in the course of his duty and shortly before his death, had made a verbal statement to his superior officer as to where he was going, and what he was going to do, it was held that this statement, which was to the effect that the deceased was going to watch the accused, was admissible.<sup>1</sup>

57. It may sometimes happen that a material witness, who has given evidence at the preliminary inquiry, cannot attend at the trial. In proceedings before a civil court for indictable offences, provision is made for such cases by a statute<sup>2</sup>, which enacts that the deposition may be read as evidence on proof that the witness is dead or insane or so ill as not to be able to travel or is kept out of the way by means of the procurement of the accused or on his behalf; that the deposition was taken in the presence of the accused person; that the accused then had a full opportunity of cross-examining the deponent; and further, that the deposition purports to be signed by the justice by or before whom it purports to be taken.

Admissibility of deposition.

58. In the case, however, of trial by court-martial, there is no similar provision making the summary of evidence taken before a commanding officer, when an accused person is remanded for trial, admissible in evidence in the same circumstances as depositions taken before a magistrate when a prisoner is committed for trial by a jury. Accordingly, the summary, except so far as it contains admissions by the accused himself, made after proper caution,<sup>3</sup> cannot be admitted as evidence of the facts recorded in it unless the accused has pleaded guilty.<sup>4</sup> But where a statement recorded in the summary is put in issue before a court-martial, as, for example, where a discrepancy is alleged between that statement and the evidence given before the court, or where the alleged wilful falsehood of such a statement is made the subject of a charge, the summary, if purporting to give the *verbatim* signed statement of the witness, may be given in evidence as confirmatory of the statement having been made.

Summary of evidence, how far admissible.

59. The rule excluding hearsay evidence is, as has been seen, applicable to written or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, either under the general law, or under express statutory provisions, admissible as evidence of the matters to which they relate.

Application of hearsay rule to documentary evidence.

60. Thus, by the general law, a statement of any fact of a public nature, if made in any recital in a public Act of Parliament, or in any Royal proclamation, or speech in opening Parliament, or in

Recitals of public facts or statements, proclamations, &c.

<sup>1</sup> See Steph., Dig. Ev., art. 27.

<sup>2</sup> Criminal Justice Act, 1925, s. 13 (3).

<sup>3</sup> See R.P. 4 (E).

<sup>4</sup> See R.P. 37.

**Ch. VI** — any address to the Crown of either House of Parliament, is admissible as evidence of that fact.

Entry in public record made in performance of duty.

**61.** So also an entry in any record, official book, or register, whether British or foreign, made at the proper time for public information or reference by any person in the discharge of any duty imposed on him by law, is admissible as evidence of the facts to which it relates.

Special provisions of Army Act.

**62.** And, under the special provisions of the Army Act, attestation papers, letters, returns, and documents respecting service, army lists, gazettes, warrants, and orders made in pursuance of the Act, records in regimental books, descriptive returns, and certificates of conviction or acquittal, are made evidence of the facts stated by them.<sup>1</sup>

**IV. Rule as to opinion.**

**63.** The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inference from these facts. Thus a witness may not on a trial for desertion characterise the absence of the accused as "desertion." This is a matter of inference, and is the point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact of the accused absenting himself, and to such other facts relevant to the charge as may be within the knowledge of the witness.

Exception in case of experts.

**64.** The chief exception to this rule relates to the evidence of experts. The opinion of an expert, that is to say, a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge.

Medical experts.

**65.** Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where lunacy is set up as a defence, an expert may be asked whether, in his opinion, the symptoms proved to be exhibited by the alleged lunatic commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law.<sup>2</sup>

Experts in military science.

**66.** An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but to make his opinion admissible his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial, it is not proper to ask a witness for an opinion on matters with which all officers should be familiar, but it may be perfectly proper to put questions involving opinion to an engineer as to the progress of a

<sup>1</sup> See A.A. 163-165. Note the distinction between the provision making the copy evidence of the original, as an exception from the rule as to best evidence (e.g., s. 168 (1) (c), as to copies of the King's Regulations, Royal Warrants, &c.), and the provisions which make the document, as an exception from the rule as to hearsay, evidence of the facts to which it relates; also the distinction between a document being evidence of certain facts and (as a letter or record) evidence of the statement of those facts by some person.

The statements in the text, particularly in para. 66, as to the admission of documents, do not exclude the admission in evidence of documents which are part of the *res geste*. If, e.g., a person is charged with embezzlement, the books which it was his duty to keep are admissible in evidence as part of the transaction under investigation, and the entries made by him or under his authority in those books will be evidence against him, as part of his conduct in relation to that transaction, and as raising presumptions which appear to require explanation.

<sup>2</sup> See *Steph.*, Dig. Ev., art. 49, and cases there cited as illustrations.

sap, or to an artillery officer as to the probable effect of his arm, if directed as assumed; since these matters, though having reference to military science, are not of such a nature as presumably to be known to each member of a court-martial. Ch. VI  
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67. With respect to handwriting, it is specially provided by statute<sup>1</sup> that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute. The comparison may be made either by a person acquainted with the handwriting, or by an expert in handwriting,<sup>2</sup> or by the court itself. A witness may be required to read writing or to write in the presence of the court. But it must be borne in mind that writing made for the special purpose of comparison is not unlikely to be disguised. The importance of an expert's evidence in such cases lies not so much in the opinion which he expresses as in the fact that he draws the attention of the court to similarities and dissimilarities which they might not notice without his assistance, but the value of which (when pointed out) they can fully appraise for themselves. Where a question of forgery is to be decided by comparison of handwritings only, the assistance of an expert is most desirable.<sup>3</sup> Experts in  
hand-  
writing.

68. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief as to the identity of a person or thing, or as to the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. A witness who falsely swears that he "believes" a thing to be so-and-so is as much guilty of perjury as one who falsely swears that "it is" so-and-so. Rule  
excluding  
opinion  
does not  
exclude  
evidence as  
to belief.

69. In cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary to require a witness to declare his opinion, because that opinion may be an impression derived from a combination of circumstances, occurring at the time referred to, which it would be difficult, if not impossible, fully to impart to the court. But it would be improper to draw the attention of a witness to facts, whether stated by himself or by another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, being in possession of facts, are the only proper judges of their tendency. If the witness is asked a question inviting him to express his opinion as to the general conduct of the person accused, or to give his judgment on the whole matter of the charge, he may, and should, decline to answer it. Opinion as  
to conduct,  
how far  
admissible.

70. A witness may not read his evidence or refer to notes of evidence already given by him, but he may while under examination refresh his memory by referring to any writing made by Refreshing  
memory.

<sup>1</sup> Criminal Procedure Act, 1865, s. 8.

<sup>2</sup> Provided the witness is *in fact* skilled in the comparison of handwriting, it is immaterial that he is not a professional expert and immaterial how he acquired his skill. *R. v. Silverlock* L.R. [1894], 2 Q. 9, 768.

<sup>3</sup> *E. v. Rishard* [1918], 18 Cr. App. Rep. 140.

**Ch. VI** himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. He may also refer to any such writing made by any other person, and read by the witness within the time aforesaid if, when he read it, he knew it to be correct. Any writing so referred to must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it.

Notes referred to not evidence of themselves.

**71.** But a witness who refreshes his memory by reference to a writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written. If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as being hearsay.

(v) *Admissions and confessions.*

Rule as to admissions.

**72.** In civil actions for damages, &c., admissions are often made before trial by both parties to save the expense of calling witnesses as to facts not really in dispute. This practice is not permissible in criminal cases; but it would seem that at the actual trial the accused or his counsel can admit facts without formal proof, at any rate in the case of offences not amounting to felonies.<sup>1</sup> It is the practice of courts-martial to receive admissions so made in open court as to collateral or comparatively unimportant facts, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

Of course the rule that criminal cases are not to be tried upon admissions designedly made out of court does not preclude the prosecutor from proving statements made by the accused either verbally or in writing, which either amount to confessions (see succeeding paragraphs) or form part of the *res gestæ* or transaction alleged against him, such as, for example, entries in his account books, &c.

Meaning of "confession."

**73.** In the following paragraphs the word "confession" means not merely a full confession of a person's guilt, but any statement, verbal or written (including the giving of a specimen of his handwriting), which may tend to show that he is guilty.

Confession must be voluntary.

**74.** The rule as to confessions is that before a confession can be received in evidence, it must be proved affirmatively by the prosecution that it was free and voluntary.

<sup>1</sup> *A. v. Tbohnstli* (1830) 8 C. & P. 575.

75. For this purpose a confession is deemed not to be free and voluntary if it appears to have been caused by any inducement, threat, or promise proceeding from a magistrate<sup>1</sup> or other person in authority or concerned in the charge (e.g., the prosecutor or the person having the custody of the accused), and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly; and if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage, or avoid some evil in reference to the proceedings against him.<sup>2</sup> Thus, on the trial of A for murdering B, a handbill issued by the Secretary of State, promising a reward and pardon to any accomplice who would confess, was brought to the knowledge of A, who, under the influence of a hope of pardon, made a confession. It was held that the confession was not voluntary.<sup>3</sup>

Confession when not deemed voluntary.

76. A confession does not cease to be voluntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the accused. Thus, A being charged with the murder of B, the chaplain of the gaol read the Commination Service to A, and exhorted him on religious grounds to confess his sins. A in consequence made a confession, and it was held that this confession was voluntary and admissible in evidence, inasmuch as the inducement amounted to a mere moral exhortation and did not refer to any temporal benefit to be derived by A.<sup>4</sup>

Confession when deemed voluntary.

77. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise take away its voluntary character. Thus, A is accused of the murder of B, and C, a magistrate, tries to induce A to confess by promising to try to get him a pardon if he does so. The Secretary of State informs C that no pardon can be granted, and this is communicated to A. After this A makes a statement. This is a voluntary confession.<sup>5</sup>

Confession made after removal of impression produced by threat, &c., deemed voluntary.

78. There are numerous reported cases in which the admissibility of confessions made to, or elicited by, police officers has been discussed; and it cannot be said that the law upon the point is even yet absolutely settled.

Question by, and statement to, police officers.

The Judges of the King's Bench Division have issued the following rules for the guidance of the police, and they are of course equally applicable to persons concerned with the arrest or custody of military offenders:—

"(1) When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting

<sup>1</sup> A C.O. investigating a charge, or an officer taking a summary of evidence, may be regarded as in the same position for this purpose as a magistrate.

<sup>2</sup> "No statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale."—*Ibrahim v. R.* L.R. (1914), A.C. 599.

<sup>3</sup> *R. v. Beesell* [1847] Car. & Marsh. 584, cited as an illustration by Steph., Dig. Ev., art. 22; *R. v. Thompson* L.R. (1893), 2 Q.B. 12.

<sup>4</sup> *R. v. Gilliam* [1833], 1 Moo. C.C., 136, cited by Steph., Dig. Ev., art. 22.

<sup>5</sup> Steph., Dig. Ev., art. 22; *R. v. Clewes* [1890], 4 C. & P., 231.

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questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

- (2) Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.
- (3) Persons in custody should not be questioned without the usual caution being first administered.
- (4) If the prisoner wishes to volunteer any statement, the usual caution should be administered.

It is desirable that the last two words of the usual caution should be omitted, and that the caution should end with the words "be given in evidence."

- (5) The caution to be administered to a prisoner, when he is *formally* charged, should therefore be in the following words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

- (6) A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.
- (7) A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.
- (8) When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged; but each of such persons should be furnished by the police with a copy of such statements and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.
- (9) Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish."

Provided that such rules are observed there can be no question as to the admissibility of the statement. Whether non-observance

of them renders a statement inadmissible is perhaps doubtful; Ch. VI but the better view appears to be that a statement is in law admissible notwithstanding that it was obtained by a person in authority, and notwithstanding non-observance of the rules, if the prosecution satisfy the court that it was not in fact induced by any fear of prejudice or hope of advantage as explained in the preceding paragraphs.

79. At the same time it is contrary to the elementary principles of English law to endeavour to trap a man into incriminating himself. Though a confession obtained by fraud or deception, or under a promise of secrecy, or from a drunken man, or by unfair questioning, may be legally admissible, yet the person obtaining it will expose himself to judicial censure, and the judge may even consider himself justified in excluding the statement, if the confession was an unguarded answer made in circumstances that rendered it unreliable, or for some other reason unfair to be allowed in evidence against the prisoner. Statements obtained unfairly.

80. Facts discovered in consequence of a confession improperly obtained, and so much of the confession as distinctly relates to those facts may be proved. Thus, A, accused of burglary, makes a confession to a policeman under an inducement which prevents it from being voluntary. Part of it is that A had thrown a lantern into a certain pond. The fact that he said so, and that the lantern was found in the pond in consequence, may be proved.<sup>1</sup> Facts discovered through involuntary confession admissible.

81. If a confession is given in evidence, the whole of it (subject as stated in para. 80) must be given, and not merely the parts disadvantageous to the accused person. Whole of confession must be given.

82. A confession may be used as such against the person who makes it though it was given on oath, and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used, and though the witness may have refused to answer the questions put to him; but if, after refusing to answer such questions, the witness is improperly compelled to answer, his answers are not voluntary.<sup>2</sup> Thus A was charged with maliciously wounding B. Before the magistrates A had appeared as a witness for C, who was charged with the same offence. A's deposition was allowed to be used against him on his own trial.<sup>3</sup> Confession made on oath or in previous proceedings

Statements made by a man when charged before his commanding officer, or at the taking of a summary of evidence are admissible before a court-martial, if he was cautioned (see R.P. 4 (E)); but the proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against an officer or soldier before a court-martial, unless the court-martial is one for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry.<sup>4</sup>

83. The general rule is that a confession is not admissible as evidence against any one except the person who makes it. Against whom confession admissible.

<sup>1</sup> Steph., Dig. Ev., art. 22; *R. v. Gould* [1840], 9 C. & P., 364.

<sup>2</sup> Steph., Dig. Ev., art. 23.

<sup>3</sup> *R. v. Chidley and Cummins* [1860], 8 Cox, Crim. Ca., 365.

<sup>4</sup> R.P. 124 (L). The privilege under this R.P. does not extend to civil proceedings; see note 3 *ibid.*

Ch. VI — Rule (8) in para. 78 shows how such a statement may properly be brought to the notice of another person implicated in the offence who does not hear it made.

Where one prisoner in the hearing of another makes a confession implicating that other, it would appear to be admissible against that other to exactly the same extent as a statement made in his hearing by any other person—as to which see para. 48 *ante*.

(vi) *Who may give evidence.*

General rule as to competency of witnesses.

84. As a general rule, every person is a competent witness. Formerly persons were disqualified by crime or interest, or by being parties to the proceedings, but these disqualifications have now been removed by statute,<sup>1</sup> and the circumstances which formerly created them do not affect the competency, though they may often affect the credibility, of a witness.

Competency of persons charged.

85. Under the general law as it stood before the Criminal Evidence Act, 1898, came into force, a person charged with an offence was not competent to give evidence on his own behalf, but many exceptions had been made to this rule by legislation, and the rule itself was finally abolished by that Act. Under the present law a person charged is a competent witness for the defence if he wishes to give evidence.

So, too, under the law as it stood before 1898, persons jointly charged and being tried together were not competent to give evidence either for or against each other. Under the present law a person charged jointly with another is a competent witness for the defence, but he cannot be called against his will by his co-defendant. If, therefore, an accused thinks that the evidence of a person whom it is proposed to try with him is material to his defence, but will not be given voluntarily, he should claim a separate trial.<sup>2</sup>

An accused person who gives evidence for the defence may be cross-examined by his co-defendants, and also by the prosecution with a view to establishing either his own guilt or that of his co-defendants.<sup>3</sup>

If the prosecution find it necessary to call one suspected participator in a crime as a witness against the others, the proper course is not to arraign him with them, or (if he has been so arraigned) to offer no evidence and take a verdict of acquittal. He can also be called if and when he has himself pleaded guilty.

Evidence of accomplices.

86. The evidence of an accomplice is admissible against his principal, and *vice versa*, subject, if they are tried together, to what has been stated in the preceding paragraph. As has been stated in para. 45 the evidence of an accomplice should always be received with great caution.

<sup>1</sup> Evidence Acts, 1843 and 1851; Criminal Evidence Act, 1898. The provisions of the last-mentioned Act were, in accordance with s. 6 of the Act, applied to courts-martial by R.P. 73 (B).

<sup>2</sup> See R.P. 16.

<sup>3</sup> *R. v. Macdonald or Macdonald* [1909], 2 Cr. App. Rep. 322; *R. v. Hudson* L.R. [1902] 1 K.B. 362; *R. v. Paul* L.R. [1920], 2 K.B., 182.



87. The wife of a person charged is now a competent witness, but, except in certain special cases<sup>1</sup>—

- (i) She can only give evidence for the defence; and,
- (ii) She can only give evidence if her husband applies that she should do so.

These restrictions apply only to lawful wives.

88. A witness is incompetent if, in the opinion of the court, he does not appear to have sufficient discretion. Thus an idiot cannot give evidence, but if a lunatic is tendered as a witness, he may be sworn and give evidence, provided that the court consider that he is of competent understanding and is aware of the nature and obligation of an oath.<sup>2</sup>

89. A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible, but such writing must be written and such signs made in open court. Evidence so given is deemed to be oral evidence.<sup>3</sup>

Evidence not intelligible to an accused must be translated to him if he is not defended by counsel: if he is so defended, then, with the approval of the judge, this requirement may be waived.

90. An infant may be sworn as a witness in any criminal case provided that such infant understands the nature and moral obligation of an oath. But where a child of tender years who is put forward as a witness does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be received though not given on oath, if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth: such evidence, however, requires to be corroborated (see para. 45 *ante*)<sup>4</sup>.

91. The particular form of the religious belief of a witness, or his want of religious belief, does not affect his competency. If he takes an oath he may take it with such ceremonies and in such manner as makes it binding on his conscience.<sup>5</sup> If he objects to take an oath on the ground that he has no religious belief, or that taking an oath is contrary to his religious belief, he may make a solemn affirmation or declaration.<sup>6</sup>

92. A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn to give evidence at any stage of the proceedings; but the Army Act and Rules of Procedure direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness.<sup>6</sup>

<sup>1</sup> The special cases in which a wife can be called as a witness either for the prosecution or for the defence, and without the consent of the person charged, are where the accused is charged with an offence under the following enactments:—ss. 48–55 of the Offences against the Person Act, 1861; ss. 12 and 16 of the Married Women's Property Act, 1882; the Criminal Law Amendment Act, 1885; the Vagrancy Act, 1898; the Immoral Traffic (Scotland) Act, 1902; the Children Act, 1906 (Part II); the Criminal Law Amendment Act, 1912, s. 7; the Vagrancy Act, 1824, s. 8; the Punishment of Incest Act, 1908; Mental Deficiency Act, 1913, s. 56; Criminal Justice Administration Act, 1914, s. 28. The same rule applies in cases in which the wife is by common law a competent witness against her husband, *i.e.*, where the proceeding is against the husband for bodily injury or violence inflicted on his wife.

<sup>2</sup> Steph., Dig. Ev., art. 107.

<sup>3</sup> Children Act, 1906, s. 30 as amended by the Criminal Justice Administration Act, 1914, s. 28 (3); see also Criminal Law Amendment Act, 1885, s. 4.

<sup>4</sup> R.P. 30; and see Oaths Act, 1888.

<sup>5</sup> Oaths Act, 1888, s. 1; A.A. 52 (4); R.P. 82. See also Oaths Act, 1909.

<sup>6</sup> A.A. 50 (3); R.P. 19 (B) (ii) and 106 (D).

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Distinction between competency and credibility.

93. It will be seen that the effect of the successive enactments which have gradually removed the disqualifications attaching to various classes of witnesses has been to draw a distinction between the *competency* of a witness and his *credibility*. No person is disqualified on moral or religious grounds, but his character may be such as to throw grave doubts on the value of his evidence. No relationship, except to a limited extent that of husband and wife, excludes from giving evidence. The parent may be examined on the trial of the child, the child on that of the parent, master for or against servant, and servant for or against master. The relationship of the witness to the person preferring the charge or the accused in such cases may affect the credibility of the witness, but does not exclude his evidence.

(vii) *Privilege of witnesses.*

Person competent not always compellable to give evidence.

94. It by no means follows that, because a person is *competent* to give evidence, he is therefore *compellable* to do so. There are many cases in which a witness before a civil court may decline to answer a question or produce a document, and the like privileges are expressly extended by statute to witnesses before courts-martial.<sup>1</sup>

Witness not to be compelled to incriminate himself.

95. A witness (other than the accused himself when giving evidence on his own application, and as to the offence wherewith he is charged), cannot be compelled to answer a question if the answer would, in the opinion of the court, have a tendency to expose him to any criminal charge, penalty, or forfeiture, or to any military punishment. In practice the court should warn a witness that he cannot be compelled to answer any question tending to incriminate him; but a witness himself is not the sole judge whether his evidence will bring him into danger; the court must be satisfied that there really is reasonable ground to apprehend any such danger, and any doubt upon the matter will be solved in favour of the witness.

Rules as to accused giving evidence.

96. Where the accused offers himself as a witness he may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged. But he may not be asked, and if he is asked must not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

- (i) The proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or,
- (ii) He has personally or by his advocate asked questions of the witnesses for the prosecution, with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution; or,
- (iii) He has given evidence against any other person charged with the same offence.<sup>2</sup>

<sup>1</sup> See A.A. 128, and R.P. 73 (B).

<sup>2</sup> See R.P. 80.

He may not be asked questions tending to criminate his wife. Ch. VI

Evidence tending to show that the accused has been guilty of criminal acts other than those covered by the charge is only admissible in the circumstances mentioned in para. 21 *et seq* above.

97. The privilege as to incriminating answers does not cover answers merely tending to establish a civil liability. No one is excused from answering a question or producing a document only because the answer or document may establish or tend to establish that he owes a debt, or is otherwise liable to any civil suit, either at the instance of the Crown or of any other person.<sup>1</sup>

Privilege does not extend to answers showing civil liability.

98. The privilege of not answering for the above reasons is the privilege of the witness, and therefore he may waive it, but the privilege mentioned in the following paragraph is for the protection of other parties, and cannot be waived except with their consent.

When privilege may be waived by witness.

99. No one can be compelled to give evidence relating to any affairs of State, or as to official communications between public officers upon public affairs, except with the permission of the officer at the head of the department concerned. This class of privilege is based on considerations of public policy.

Evidence as to affairs of State.

On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication, read in open court, and attached to the proceedings.

100. So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial. The only exception to this rule is in the case of a court-martial held for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry.<sup>2</sup>

Privilege as to proceedings of court of inquiry.

101. Again, in cases in which the Government is immediately concerned, no witness can be compelled to answer any question the answer to which would tend to discover the names of persons by or to whom information was given as to the commission of offences. It is, as a rule, for the court to decide whether the permitting of any such question would or would not, in the circumstances of the particular case, be injurious to the administration of justice.<sup>3</sup>

Information as to commission of offences.

102. A husband is not compellable to disclose any communication made to him by his wife during the marriage; and a wife is not compellable to disclose any communication made to her by her husband during the marriage.<sup>4</sup>

Communications during marriage.

103. A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or docu-

Professional communications.

<sup>1</sup> 46 Geo. III, c. 37.

<sup>2</sup> See also para. 82 above, and R.P. 124 (L).

<sup>3</sup> Steph., Dig. Ev., art. 113.

<sup>4</sup> Criminal Evidence Act, 1898; and R.P. 80 (E).

Ch. VI — mentary, made to him *as such legal adviser*, by or on behalf of his client, during, in the course of, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to:—

- (1) Any such communication if made in furtherance or any criminal purpose;
- (2) Any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes barristers and solicitors, their clerks, and interpreters between them and their clients, and the person representing or assisting the accused during trial before a court-martial.<sup>1</sup>

Doctors and  
clergymen  
not privi-  
leged.

104. Medical men and clergymen are not privileged from the disclosure of communications made to them in professional confidence, but it is not usual to press for the disclosure of communications so made to clergymen.

Questions to  
be entered  
on pro-  
ceedings  
whether  
answered  
or not.

105. The questions, whether answered or not, should be entered on the proceedings. When the witness claims the privilege of not answering, it is for the court to decide whether the question is within any of the exceptions. Courts-martial, like other courts, should in practice interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(viii) *How evidence is to be given.*

Mode of  
giving evi-  
dence dealt  
with by  
Rules.

Points  
requiring  
attention of  
court.

106. The mode in which evidence is to be given before courts-martial is fully dealt with in the Rules of Procedure, to which the following paragraphs must be taken as supplemental.

107. It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered:—

- (a) That it is relevant to the issue.
- (b) That it is the best evidence procurable.
- (c) That it is not within the rule rejecting hearsay evidence.
- (d) That (except in the case of experts) it is not a mere expression of opinion.
- (e) That if it is a confession or admission, it is legally admissible.
- (f) That if it is a document, it is legally admissible and properly put in evidence.<sup>2</sup>
- (g) That no document or other thing which has not been properly put in is used for the purposes of the trial.<sup>3</sup>

<sup>1</sup> Steph., Dig. Ev., art. 115.

<sup>2</sup> A document is said to be "put in" when it is produced to the court, and, unless verification by a witness is unnecessary (para. 38), properly verified. It should be noted that a document which is used by a witness merely for the purpose of refreshing his memory is not produced to the court or "put in."

<sup>3</sup> This must, however, be taken subject to the qualification that for purposes of *identification*, &c., any document or thing may be shown to a witness before it has been formally proved and put in. See para. 112.

- (h) That any witnesses called are legally competent to give evidence. Ch. VI
- (i) That any document with which a witness proposes to refresh his memory can legally be used by him for the purpose.
- (h) That the examination of witnesses is fairly and properly conducted.

108. This last point requires a little more detailed notice. The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief; and on this examination the questions must be relevant to the issue, that is to say, must relate to the matters in issue at the trial. The court must see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him. Examination of witnesses.

109. Accordingly, a witness must not be asked in examination-in-chief leading questions, that is to say, questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify. For instance, a witness must not be asked, "Did the accused then go into the barrack-room?" but "What did the accused do next?" If it were not for this rule a favourable and dishonest witness might be made to give any evidence that is desired. It would be mere waste of time to enforce the rule where the questions asked are simply introductory and form no part of the real substance of the inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No." Leading questions.

110. Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness. Test of what are leading questions.

111. The following may be taken as examples of fair and unfair examination of a witness. Suppose a man to be charged with the murder of another by stabbing, the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances in which the blow was struck. There would be no objection to asking the witness— Examples of fair and unfair questions.

If he remembered the 12th August, and—

If he was in North Street about noon on that day.

These questions, though in a leading form, are merely introductory. If the defence of the accused was that he had struck the

**Ch. VI** blow, but that he had done it in self defence, there would be no objection to going a little further and asking—

Whether he saw the deceased and the accused there.

But from this point all leading questions should be avoided, and the examination should be continued in some such form as this :

In what part of the street were the accused and deceased when you first saw them ?

How far were you from the accused and the deceased ?

Tell us in your own words exactly what passed.

To ask, instead of the first question—

Were they at the upper end of the street when you first saw them ?

would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the witness first saw them to the place where the body was found. It would obviously be still more improper to ask,

Did you see the accused go up stealthily behind the deceased and strike him a blow with a knife ?

or any question of that character.

If, on the other hand, the defence set up were an *alibi*, it would be improper to ask directly after the introductory questions—

Whether the witness saw the deceased and the accused there.

The questions in that event should rather be—

Whether he saw anyone there.

Whether he could identify them.

Whether he can identify anyone in court as having been present,

though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the accused, and he might be distinctly asked,

Whether he saw that person there.

But this should not be done until the witness had said that he saw some persons there, and that he would know them again.

Rule as to directing attention to particular persons and things.

112. The rule in these cases is, that the attention of a witness who has alluded to any person or thing, may be called to a particular person or thing for the purpose of identification, and that the witness may be asked directly whether that is the person or thing to which he alluded ; but in practice this should only be done after examination in the ordinary way has failed to elicit any distinct replies. When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such questions as :—Whether he recognises it, and whether he saw anything done with it, or to it ; but such a question as :—Whether he saw A strike B with the stick or belt, or whether he saw A make an alteration in the document, should not be admitted.

Exceptions in case of hostile witness.

113. Of course, if a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule fails, and the court should allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side except that (as he had been put forward as worthy of credit

by the person calling him) that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character.<sup>1</sup> Ch. VI

114. When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions and questions not directly bearing on the issue may be put, and must be answered, as the cross-examining party is entitled to test the examination-in-chief by every means in his power; and questions are often put in cross-examination for the sole purpose of putting a witness who is supposed to have learnt up the story, off his guard. Questions also may be put in cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit by impeaching his motives or injuring his character, though such questions cannot be put on the examination-in-chief or re-examination. Rules as to cross-examination.

115. Questions which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact, are improper and should not be allowed even in cross-examination. Again, though questions not directly bearing on the issue may be asked, a witness should not be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or his credibility. If the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should be required to put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining. Further observations on cross-examination.

A witness under cross-examination may be asked any questions which tend to test his accuracy, veracity, or credibility, or (except in the case of a witness originally called by the person cross-examining him) to shake his credit by injuring his character. But a witness may of course decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit, a right which has sometimes been seriously abused in civil courts, is qualified in the case of trials before courts-martial by Rule 92 of the Rules of Procedure.

116. Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character, except :— Exclusion of evidence to contradict answers as to questions testing veracity.

- (i) Where the witness is asked whether he has ever been convicted of any felony or misdemeanour and denies or refuses to answer<sup>2</sup>;
- (ii) Where he is asked a question tending to show that he is biassed or partial;
- (iii) Where he has previously made inconsistent statements;
- (iv) Where he can be shown to be a notorious liar.

In the first two cases proof may be given of the truth of the facts suggested. The other two cases are dealt with in the following paragraphs.

117. A witness may be asked whether he has, on a previous occasion, made a statement relative to the issue and inconsistent Cross-examination as to previous statements.

<sup>1</sup> Criminal Procedure Act, 1865, s. 3.

<sup>2</sup> Criminal Procedure Act, 1865, s. 6. Such questions could not be put to an accused person giving evidence except in the cases mentioned in para. 96.

**Ch. VI** with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not admit that he made such a statement, proof may be given that he did in fact make it. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict, and evidence may be called to prove that the evidence of a witness, though consistent with the summary, is not consistent with the evidence given by him at the investigation before the commanding officer. Such a question may be put, even though the statement may have been in writing (notwithstanding the rules as to documentary evidence), and even without the writing being shown to him or proved in the first instance; though it should be shown to him afterwards, and his attention called to those parts of the writing which are to be used to contradict him, as otherwise the contradictory proof cannot be given.<sup>1</sup>

Impeaching  
credit of  
witnesses.

**118.** The credit of any witness may be impeached by the adverse party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on his oath. Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Rule as  
to re-ex-  
amination.

**119.** At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.

Questions  
by court.

**120.** After the re-examination of a witness is closed, the court often ask him questions to clear up some point which they regard as material.

Frequently, too, the court recall a witness, or allow him to be recalled for further examination; and sometimes they even call and examine a witness who has not been called by either party.<sup>2</sup> In any of these cases the party affected by the answers should be allowed to suggest further questions, or to cross-examine (as the case may require).

If a witness is so called or recalled after the case for the accused is closed, the accused should also be allowed to give further evidence in rebuttal, and to comment upon the fresh evidence if he has already made his address.<sup>3</sup>

<sup>1</sup> Criminal Procedure Act, 1865, ss. 4, 5.

<sup>2</sup> See *R. v. Jackson* [1919] 14 Cr. App. Rep. 41: *R. v. Dora Harris* L.R. [1927] 2 K.B. 587.

<sup>3</sup> See R.P. 85 86.



## CHAPTER VII

## OFFENCES PUNISHABLE BY ORDINARY LAW

*Introductory.*

1. The first forty sections of the Army Act specify the various military offences of which a person subject to military law may be guilty. The sections embrace not only offences against discipline, but also offences against the persons and property of persons subject to military law. Nearly all the offences of which a soldier can be guilty as a soldier and as against another soldier are included in these sections.

Liability of soldier to civil as well as military law.

A soldier, however, is not only a soldier but a citizen also, and as such is subject to the civil as well as to the military law. An act which constitutes an offence if committed by a civilian is none the less an offence if committed by a soldier, and a soldier not less than a civilian can be tried and punished for such an offence by the civil courts.<sup>1</sup>

2. In order to give military courts complete jurisdiction over soldiers, courts-martial are authorised to try and punish soldiers for civil offences, namely, offences which, if committed in England, are punishable by the law of England.

Jurisdiction of military courts over civil offences.

They are not allowed to try the most serious offences<sup>2</sup>—treason, murder, manslaughter, treason-felony, or rape—if those offences can, with reasonable convenience, be tried by a civil court. They are, therefore, prohibited from trying any such offence if it is committed in the United Kingdom, or if it is committed anywhere else in the King's dominions, except Gibraltar, within a hundred miles from a place where the offender can be tried by a civil court, unless indeed the offence is committed on active service.

Subject to the above exceptions, a court-martial can try all civil offences of a soldier wherever committed.

3. But though this wide power of trial is given, it is not as a rule expedient to exercise the power universally.

Principles on which jurisdiction should be exercised.

Where troops are stationed at places having no available civil courts under British judges within a reasonable distance, or are stationed in a foreign country, and the only law to which the troops are subject is that administered by military tribunals, it is necessary to try all offences committed by soldiers by courts-martial.

But in the United Kingdom, in most parts of India, and in most of the colonies, where there are regular civil courts close by, it is, as a general rule, desirable to try by a civil court a civil offence committed by a person subject to military law if the offence is one which relates to the property or person of a civilian, or if the civil authorities intimate a desire to bring the case before a civil court.

This general rule is, however, subject to qualifications. The line dividing the military from the civil offence may be narrow. The offence may have been committed within the barracks or

<sup>1</sup> A.A. 41 (b), 162 (2), and Ch. VIII,  
<sup>2</sup> A.A. 41.

Ch. VII military lines. There may be a doubt whether the person affected by the offence is or is not a civilian. The soldier may be one of a body of troops about to sail abroad. There may be reasons making the prompt infliction of punishment expedient. In any such case it may be desirable to try the offence by court-martial.

There may be also considerations arising out of the importance of maintaining discipline. If offences of a particular kind, or offences generally, are rife in a corps or at a station, it may be necessary, for the sake of discipline, to try every offence, whether civil or military, by court-martial, so that the punishment may be prompt and in accordance with the requirements of discipline.

The heinousness of an offence is also an element for consideration. A trifling offence, such as would, if tried before a civil court, be properly punishable by a small fine, may well be punished by the military tribunal immediately, especially if the case is one in which stoppages may be ordered to make good damage occasioned by the offence.<sup>1</sup> On the other hand, a very serious offence, especially one which would ordinarily be tried by a jury, had better be relegated to the civil court, as should also any case where intricate questions of law are likely to arise.

Object of  
the chapter.

4. The object of this chapter is to give some description of the civil offences which may come before courts-martial. The list is not exhaustive, as no scientific classification of offences has been attempted, but the more common offences have been treated in greater detail than those which experience shows rarely, if ever, to come within the cognizance of courts-martial.<sup>2</sup>

Before proceeding to a description of the various offences it will be convenient to discuss, first, the punishments which may be awarded, and, secondly, the general principles as to criminal responsibility, principles, it must be remembered, which are applicable to military not less than to civil offences.

### (i) *Punishments.*

Punish-  
ments.

5. Section 41 of the Army Act specifies the punishments which may be awarded for the most serious offences, *i.e.*, treason, murder, manslaughter, treason-felony and rape. With regard to every other civil offence, the effect of the section is to empower courts-martial to award as a maximum punishment either, in the case of an officer cashiering, or in the case of a soldier two years' imprisonment, with or without hard labour, or the punishment which under the civil law may be awarded for the offence. This rule is, of course, subject to the general limitation on the powers of punishment by district courts-martial<sup>3</sup> and to the general prohibition applicable to all courts-martial against awarding a period of imprisonment exceeding two years or penal servitude

<sup>1</sup> A.A. 136(3).

<sup>2</sup> To those who wish for a more detailed knowledge of the criminal law of England the following authorities are recommended:—Russell on Crimes and Misdemeanours, Archbold's Pleadings and Evidence in Criminal Cases, Kenny's Outlines of Criminal Law, Stephen's Digest of Criminal Law, Stephen's General View of the Criminal Law, the Report of the Criminal Code Bill Commission, 1879, and the Article on Criminal Law and Procedure in Halsbury's "Laws of England." A convenient summary of the law relating to each particular offence will be found in the Encyclopædia of the Laws of England (edited by Mr. A. W. Renton), under the proper heading.

<sup>3</sup> A.A. 48 (6). Under this provision a district court-martial may award any punishment except death or penal servitude, but cannot try an officer.

for a term less than three years.<sup>1</sup> In the table at the end of this chapter will be found the punishments which a civil court can award in respect of each of the offences described in the chapter. A comparison of the various punishments will be a guide to the court as to the heinousness of each offence in the eye of the law. It must be remembered that each punishment specified in the table is a maximum and that, except in the case of murder, any less punishment may be awarded by a court-martial for a civil offence even if such punishment is not one which a civil court could have awarded, *e.g.*, discharge with ignominy from His Majesty's service. In awarding punishment for a civil offence a court-martial should be guided by exactly the same principles as those which guide them in punishing military offences.<sup>2</sup> Ch. VII

### (ii) *Responsibility for Crime.*

6. The general rule is that a person is responsible for the natural consequences of his acts. But there are cases in which it would be obviously unfair to make a person criminally responsible for doing a particular act, though in ordinary circumstances such an act would be an offence. Criminal responsibility.

7. A child is considered to be incapable of committing an offence before the age of seven years; and any act of a child between the ages of seven and fourteen can only be held to be an offence if it is shown affirmatively that the child had sufficient capacity to know the nature and consequences of his act, and to appreciate that he was doing wrong. Children.

8. A person cannot be convicted on a criminal charge in respect of an act done or omission made by him if it is proved that at the time when he did the act or made the omission he was labouring under such defect of reason through disease of the mind as made him incapable of knowing the nature and quality of the act he was doing, or, if he did know it, that such an act was wrong.<sup>3</sup> Thus, if a man kills another under the insane delusion that he is breaking a jar, he will not be criminally responsible. Insane persons.

Every person is, however, presumed to be sane and to be responsible for his acts until the contrary is proved, and it must, therefore, be clearly established by the defence that the accused is brought within the terms of the exception as above laid down before he can have the benefit of it. Unless a person is brought strictly within the terms of the exception it is no excuse whatever to show that his mind is affected by disease. For instance, the fact that a person is under the delusion that his nose is made of glass will not in any way excuse him if he commits an offence, unless he can prove that the delusion had a connection with the offence.

It is immaterial whether the unsoundness of mind is permanent or only temporary, whether it is due to natural imbecility or produced by disease, or whether the disease itself is due to the sufferer's own dissipation, as, for instance, in the case of *delirium tremens*.

<sup>1</sup> A.A. 44, (b) and (j) and proviso (1a).

<sup>2</sup> See Ch. V, paras. 76-86.

<sup>3</sup> When on the trial by court-martial of a person charged with an offence it appears that such person did the act or made the omission with which he is charged but that he was insane at the time when he did or made the same, the court must find specially the fact of his insanity—A.A. 130 (2).

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Temporary  
intoxi-  
cation.

9. Temporary intoxication (from liquor or drugs)—as distinct from mental disease, which alcoholism, &c., may bring on—is not (if voluntary) in itself any excuse for crime; but evidence of drunkenness which rendered the accused incapable of forming the specific intent essential to constitute the crime must be taken into consideration together with the other facts proved in order to determine whether or not he had that intent.

Evidence of drunkenness falling short of a proved incapacity in the accused to form the essential intent, and establishing merely that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the ordinary presumption that a man intends the natural consequences of his acts.<sup>1</sup>

Compul-  
sion.

10. An act may also be excused if committed by a person acting in subjection to the power of others, provided that he is compelled to act as he does by threats of death or serious physical injury, continued during the whole time that he so acts, and that the part taken by him in the unlawful act or acts is throughout strictly a subordinate part.

Necessity.

11. In extreme cases an act may sometimes be justified on the plea of necessity, if it is done by a person in order to avoid inevitable and irreparable evil to himself or those whom he is bound to protect, though, of course, the act must not be disproportionate to the end to be attained, nor must more be done than is absolutely necessary to attain that end.<sup>2</sup> Thus, if the captain of a steamer, without any fault on his part, finds himself in such a position that he must either change his course or run down a boat with twenty people in it, he is justified in changing his course, although by so doing he runs a risk of swamping a boat with two people in it.

Ignorance  
of law.

12. Ignorance of *law* is no defence to a criminal charge. Thus, if A, a foreigner unacquainted with the law of England, kills B in a duel fought in England, A's act is murder, although he may have supposed it to be lawful. But ignorance of law may properly be taken into consideration in determining the amount of punishment to be awarded.

Ignorance  
of fact.

13. Ignorance or mistake of *fact* may, in some cases, be an excuse; thus, an honest and reasonable belief in the existence of facts which, if true, would make the act with which a person is charged an innocent act, would generally provide a good defence. But this excuse will not avail a person if his ignorance proceeds from wilfulness or negligence. In some few cases<sup>3</sup> even an honest and reasonable belief will not protect a man, if he is actually mistaken, and a man therefore does the act at his peril.

Parties to  
offence.

14. The responsibility of a person for the natural consequences of his acts is not limited to the simple case where he is present, and actually commits an offence with his own hand. Thus, if a soldier by design or through criminal (*i.e.*, culpable) negligence mixes a ball cartridge with blank cartridges, he will be criminally responsible if injury results, even in his absence.

<sup>1</sup> *Director of Pub. Pros. v. Beard*, L. R. (1920) A.C. 479.

<sup>2</sup> See para. 30 (*post*) as to self-defence.

<sup>3</sup> See para. 26.

15. Again, where a person commits an offence through the medium of an innocent agent, he is criminally responsible even though absent when the offence is committed. Thus, if a soldier, knowing a note to be forged, induces a comrade, who does not know it to be forged, to get it changed, or, knowing that a pair of boots does not belong to him, induces a comrade to steal them by representing that they were his own property and not the property of the actual possessor, in both these cases the soldier, but not his comrade, is criminally responsible.

Innocent agent.

16. If a person is present at the commission of an offence and aids and abets its commission by another person, he is responsible as though he had committed it himself. But it is not necessary that he should be actually present as an eye-witness or ear-witness of the transaction; he is, in law, present aiding and abetting if, with the intention of giving assistance, he is near enough to afford it should occasion arise; thus, if two or three men go out together to commit a burglary, and one waits at the corner of the street to keep watch while the others commit the burglary, the watcher will be guilty of burglary equally with the others. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognizant of the intentions of the person whom he assisted; thus, on a charge of wounding with intent to murder, it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted on the full charge.

Assisting offence.

17. If several persons combine together for an unlawful purpose or for a lawful purpose to be effected by unlawful means, each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for any offence committed by another member of the party which is unconnected with the common purpose, unless he personally instigates or assists in its commission. Thus, if a police officer goes with an assistant to arrest A in a house and all the occupants of this house combine to resist the arrest, and in the struggle the assistant is killed, the occupants are responsible. But if two persons go out to commit theft and one unknown to the other puts a pistol in his pocket and shoots a man the other is not responsible.

Common intent.

18. A person is in all cases fully responsible for any offence which is committed by another at his instigation, even though the offence may be committed in a different way from the one that he suggested; as, for instance, if a person were to instigate another to murder a man by shooting him, and the murderer stabbed the man instead, the instigator would still be responsible. Further, he is responsible for any other offence which may, and was likely to result from such instigation. But a person will not be responsible for an offence which he may have instigated another to commit, if he countermanded its execution, and notice of the countermand was received by the person instigated before the commission of the offence<sup>1</sup>: nor where he instigates one offence will he be responsible for the commission of another unconnected therewith.

Instigating an offence.

<sup>1</sup> Of course, though the execution of the crime was countermanded, the instigator would still be liable to be prosecuted for the misdemeanour of inciting to commit an offence, though not for the offence itself.

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Knowledge  
of intended  
offence.

19. Mere knowledge that a person is about to commit an offence, and even conduct influenced by such knowledge, will not make a person responsible for that offence unless he does something actively to encourage its commission; for instance, if a man knows that two others are going to fight a prize-fight, and acts as stake-holder, but takes no other part in the circumstances attending the fight, at which he is not present, and one of the prize-fighters is killed, the stake-holder will not be responsible for his death.

Accessory  
before the  
fact.

20. When a person is responsible for an offence under paras. 16, 17 and 18, he is equally responsible and liable to the same punishment as the principal offender; he may be tried before the principal offender has been tried and may be convicted even if the principal offender has been acquitted. Such a person if not present either actually or constructively at the actual commission of the offence is called an accessory before the fact, if the offence is a felony.

Accessory  
after the  
fact.

21. A person may in some cases incur criminal responsibility, even after an offence has been committed, if the offence is a *felony*,<sup>1</sup> and he becomes what is called an accessory after the fact, *i.e.*, if he assists the felon to evade justice (knowing that he has committed a felony) either by comforting, hiding, or otherwise actively assisting him, or by opposing his apprehension, or rescuing him from arrest, or by voluntarily permitting the felon to escape from his custody where the accessory is himself the custodian. Merely allowing a felon to escape, without giving him active assistance, will not make a person not being his custodian an accessory after the fact. All persons who, in felonies, would be accessories after the fact, are, in misdemeanours,<sup>1</sup> principals and may be charged and punished as such.

Attempt to  
commit  
offence.

22. An attempt to commit or to procure the commission of an offence is in itself an offence and renders a person criminally responsible even though the attempt is unsuccessful.<sup>2</sup>

A mere intention to commit an offence unaccompanied by acts will not amount to an actual "attempt," nor will acts themselves if they are merely preparatory to the commission of the offence. For instance, if a man goes to Birmingham to buy dies to make bad money, the mere going there is not an attempt to make bad money. Some act must be done which is more than an intention or preparation, and which is a real step towards the commission of the offence; thus, if the man had not only gone to Birmingham, but had actually bought the dies, he would have been guilty of an attempt to make bad money.

It is no defence to a charge of attempting to commit a crime that it was legally or physically impossible for the offender to have committed the full offence.

Where a person is charged with committing a felony or misdemeanour but the evidence shows merely an attempt to commit that offence, a jury may convict him of the attempt to commit the offence charged. A court-martial has the same power as a jury in this respect.<sup>3</sup>

<sup>1</sup> As to what offences are felonies or misdemeanours, see table at end of chapter.

<sup>2</sup> As to attempts to murder, see para. 48; and as to what amounts to an attempt to shoot, see para. 85 (footnote 3).

<sup>3</sup> See A.A. 86 (6).

**23.** In some cases the intention—that is to say, the immediate intention as distinguished from the motive—with which an act is committed becomes essential and must be proved. Intention is not, however, capable of positive proof; it can only be implied from overt acts, and, where this is the case, the intention may either be proved by independent evidence, as, for instance, by words proved to have been used by the offender or by a previous course of conduct,<sup>1</sup> or may be presumed from the act itself, according to the maxim that a man intends the natural consequences of his own act. In other words, the mode of discovering a man's intention is to consider what were at the time of his act the natural consequences of that act. Thus, if A sets fire to B's mill, the intent of A to injure B is inferred as being a natural consequence of the act of A in setting fire to the mill. Intention.

If a man bound by law to perform any duty does an act which necessarily causes, or most probably will cause, a failure in the performance of that duty, he will be held in law to have intended to fail, and therefore to have wilfully failed, to perform that duty.

Thus, for example, if one soldier in charge of another who is in military custody leaves him in a public-house, and goes away to visit a friend elsewhere, and the soldier in custody escapes, the soldier in charge of him must be considered to have wilfully permitted him to escape, because the escape was the natural result of the act; but if there was no evidence of any deliberate act of the soldier contrary to his duty, or if the escape was due to mere ordinary carelessness in the course of the performance of the soldier's duty, then he could not be held wilfully to have permitted the escape.

**24.** The motive for which a crime is committed is not an essential ingredient of that crime, but it may often serve as a clue to and explain the immediate intention. Motive.

**25.** Generally speaking, a person will not be criminally responsible for an act affecting the person or property of another if done with that other's consent. This does not apply to cases of killing or maiming, except when the killing or maiming results from a surgical or some similar operation reasonably and properly performed for the sufferer.<sup>2</sup> Thus, if one soldier with the consent or even at the request of another cuts off that other's forefinger with a view to enable him to obtain his discharge, the consent or request does not relieve the former of responsibility. The consent must be free and must not be extorted by fear of injury or given under a misapprehension of fact. Such a consent, or the consent of a lunatic, of a child, or of a person in a state of intoxication, will not relieve the person who does the act of responsibility if the act apart from the consent would constitute an offence. Consent.

**26.** A person is not criminally responsible for the result of a pure accident which is not to be attributed in any way to any carelessness or negligence, or to an unlawful act on his part. Accident.

Thus, if a woodcutter is lawfully cutting down a tree and the head of his axe flies off, or if a man is lawfully riding down a

<sup>1</sup> See Ch. VI, paras 23-26 and 96.

<sup>2</sup> In cases of this kind the consent of the sufferer will be presumed if he is unable to give it (e.g., if he is unconscious from the loss of blood).

Ch. VII — road and his horse is whipped by another person, and caused to start off, or if a man is lawfully shooting at game or any other object, and in any of these cases there result to a bystander injuries which cannot be attributed to negligence on the part of the woodcutter, rider, or shooter, as the case may be, he will not be responsible for the injuries caused.

On the other hand, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing, or having taken any proper precautions to ascertain, that the gun was unloaded, he will be responsible if death or injury results, as the accident might clearly have been prevented if he had not been culpably negligent.

In each of the above illustrations it will be noticed that it is assumed that the act from which the injuries resulted was not in itself an unlawful act. For if the act was in itself unlawful, as if the woodcutter was doing an unlawful and malicious injury to the property of another, if the rider was a horse thief riding away with a stolen horse or if the shooter was a poacher, the offender would in each case be criminally responsible for the injuries caused. This qualification is, however, confined to the cases of acts which are in themselves *unlawful*, and not mere breaches of excise laws or similar regulations; for instance, if the shooter, instead of being a poacher, was merely shooting without a gun licence, this would not of itself render him criminally responsible.

Negligence.

27. If a person fails to take proper precautions when doing anything which is in its nature dangerous, he will be responsible though he had not the least intention of bringing about the consequences of his act.<sup>1</sup> For instance, if a soldier fires his rifle without taking the precautions proper under the particular circumstances and the bullet kills a man, the soldier will be criminally responsible for his death.

### (iii) *Responsibility for the Use of Force.*

Use of  
force.

28. The general rule is that a person is criminally responsible for the use of force, but there are cases where the use of force is justifiable. The amount of force which may be so used and the circumstances under which it may be used vary widely.

Amount of  
force to be  
used.

29. In some cases any amount of force may be used, even if it entails bodily injury or even death; in other cases any amount of force may be used provided that it is not used in a manner intended or likely to cause death or grievous bodily harm.

The general principle applicable to all cases is that *no more force* may be used in any case than the person using it believes, and has reasonable grounds for believing, to be necessary to effect the object in respect of which he is entitled to use force. So long as this principle is observed, a person is not responsible for the consequences which may result in any particular case from the use of any force which is not in excess of that allowed in the class of cases to which it belongs. Nor will a person be responsible if death accidentally results from the legitimate use of force.

<sup>1</sup> See also para 31.



30. The most important cases in which the use of force is justifiable are cases relating to administration of justice, prevention of crime, self-defence, the defence of property, the preservation of discipline, and the defence of the realm.

Cases in which use of force is justifiable

A person acting as a ministerial officer in execution of the orders of some superior authority, and any person lawfully assisting him, may use force in obedience to the orders of the superior authority, if that authority when giving the order is acting as a court; that is to say, acting in a judicial capacity, in the exercise of some jurisdiction conferred by law.

The general rule in such cases is that any duly authorised person is justified in using whatever force may be necessary in order to execute the lawful order of a court of competent authority, and in overcoming any violent resistance which may be made to the lawful use of such force, as, for instance, a police officer in executing a warrant of arrest. But such a person must not use such force as is either likely or intended to cause death or grievous bodily harm (unless he is violently resisted), except where he is specially required to do so by the order itself, or where the order is a warrant of arrest for treason, felony,<sup>1</sup> or piracy, in which cases he may at once use whatever amount of force may be necessary. Should a person be unable to justify himself under the rule above stated, it will in general be no excuse for him to show that he acted under the orders of some superior civil or military authority. His justification will, in such cases, depend upon the same considerations as though he had acted entirely on his own responsibility; and the fact of his having received the orders will merely be of importance as a fact in the case which may throw light upon the state of his mind, as to reasonable belief, intent, or otherwise.

If a person believes on reasonable grounds that another is about to commit any treason or violent crime he is justified in using any amount of force in preventing its commission. Similarly, any amount of force may be used by an officer of justice to execute a warrant of arrest for treason or felony, provided in either case that the object for which force is used cannot be otherwise accomplished.

If a person is lawfully called upon to assist a police officer in the execution of his duty, he is bound to go to the officer's assistance, and will be justified in using force to the same extent as the officer himself.

The law respecting the use of force for the suppression of riots and breaches of the peace is dealt with in another part of this work.<sup>2</sup>

A person may in all cases use any amount of force which is reasonably necessary for the defence of himself or his property, if he is not himself in the wrong.<sup>3</sup>

A person who is in peaceable possession of property of any description is entitled to defend it against trespassers, and to use force for the purpose of removing them from his land, or of retaining or re-taking his goods from them; but he must not

<sup>1</sup> As to what offences are felonies, see table at the end of the chapter.

<sup>2</sup> See Ch. XIII.

<sup>3</sup> For an illustration of this, see Ch. VIII, para. 50.

Ch. VII intentionally strike or hurt an ordinary trespasser unless he is resisted, in which case he may use such force as is reasonably necessary to overcome such resistance, though even in this case, unless himself assaulted and in danger, he must not intentionally inflict death or grievous bodily harm. If, however, the trespass is a serious one, as where a trespasser endeavours forcibly to break and enter a dwelling-house with the intention of committing an indictable offence therein, any amount of force may be used to prevent him; and if it is night, such force may be used even though the trespasser has really no such intention, if the person using the force reasonably believes that he has such an intention.

The law also permits force to be used for correction or for the maintenance of discipline. Thus, a parent or schoolmaster may forcibly correct any child or pupil under his care. In all such cases the force used must be reasonable and not excessive,<sup>1</sup> otherwise the person using the force will be fully responsible for the consequences.

Finally, the law permits the use of force against the enemies of the realm in the actual heat and exercise of war.

(iv) *Responsibility for Acts of Omission.*

Acts of omission.

31. A person is not ordinarily considered to cause injury to another by the mere omission to do an act; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even *in the hope* that the other may be drowned, still he is not criminally responsible.

On the other hand, where the law imposes upon a person the duty of performing some particular act, he is held responsible if he omits to do it. For example, every person who has charge of another, *e.g.*, a child, a lunatic, an invalid, or a prisoner, is bound to provide him with necessities if he is so helpless as to be unable to provide himself; and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

So, in the case of an animal known to be dangerous, the person in charge is bound to take such precautions as will safeguard the public from danger.

Omission to perform duty.

32. Similarly, if a person undertakes to do any act the omission of which may endanger human life (as, for instance, warning persons from a range whilst firing is going on), and without lawful excuse omits to discharge that duty, he is responsible for the consequences. Again, if a person undertakes to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance, if a soldier were to undertake to cut off the trigger finger of another soldier and mortification set in, he would be responsible for the consequences of his act.

Neglect of servants.

33. If a person, legally liable as a master to provide necessary food, clothing or lodging for a servant, wilfully and without lawful excuse refuses or neglects to do so, so that the life of the servant is endangered, or his health is or is likely to be permanently injured, he is guilty of an offence.

<sup>1</sup> See case of *Governer Wall*, Ch. VIII, para. 54

(v) *Assaults and Sexual Offences.*

34. An "assault" is a movement which attempts or threatens the unlawful application of force to another person without his consent; if force is actually applied it constitutes a "battery" which is included in the term "assault."<sup>1</sup> Assault.

The use of force, however slight, is sufficient to justify a conviction for assault, if exercised with the intention to cause, or with the knowledge that it is likely to cause injury, fear, or annoyance to the other person.

The consent of the other person, in order to be an excuse, must be *bona fide* consent and not mere acquiescence.<sup>2</sup>

Not only the actual use of such force, but any act or gesture which causes the other person to apprehend that force will be used, is sufficient to constitute the offence of assault. Thus, shaking a fist in a man's face or pointing a pistol at him may be assaults.

A common assault, such as has been described above, is not generally a very serious offence, though a sentence of one year's imprisonment, with or without hard labour, may be imposed. But if the assault is attended with aggravating circumstances it becomes far more serious, and, if death results from the assault, it becomes homicide.

35. The following are examples of aggravated assaults:—

- (1) Assault with intent to commit a felony.
- (2) Assault with intent to resist the lawful arrest or detention of a person.
- (3) Assault on a police officer in the execution of his duty.
- (4) Assault with intent to commit sodomy.
- (5) Unlawful wounding; assault occasioning actual bodily harm.
- (6) Wounding with intent to murder; wounding or shooting or attempting to shoot<sup>3</sup> with intent to maim or do grievous bodily harm<sup>4</sup> or prevent apprehension.
- (7) Indecent assault on male or female.

Aggravated assaults.

36. In the case of an indecent assault upon a male or female person, consent provides no defence if the person upon whom the offence is committed is under the age of sixteen. Indecent assaults.

37. Rape is the act of a man having carnal knowledge without her consent of a female who is not his wife.<sup>5</sup> Rape.

Penetration is considered to constitute carnal knowledge; it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

<sup>1</sup> See specimen charge, No. 102, p. 733.

<sup>2</sup> See also para. 25.

<sup>3</sup> A man attempts to shoot if he does any act (such as pulling out a loaded pistol, pointing it at a person, or fumbling with the trigger) from which it might be inferred that he intended to discharge it. See also para. 22.

<sup>4</sup> See specimen charge No. 101 p. 733.

<sup>5</sup> Though a husband cannot himself commit rape on his wife, he may be convicted of rape if he assists another person to commit rape on her.

Ch. VII — It is not an excuse that the woman was a common prostitute, or the concubine of the ravisher, if the offence was committed by force or against her will; though proof of such facts is admissible, and is of course important in considering whether or not she is likely to have consented.

Consent, to be an excuse, must be actual consent, and not mere submission, and it must be voluntary, and not extorted by force or duress or fear of immediate bodily harm.<sup>1</sup> Thus, if an idiot submits to a man having connection with her without actually permitting it, this is no consent, but if she actually permits the act, though from mere sexual instinct, and without really understanding its nature, this is a sufficient consent, and therefore the man is not guilty of rape.<sup>2</sup> A man who induces a woman to permit him to have connection with her by personating her husband is guilty of rape.

A boy under the age of fourteen is conclusively presumed to be incapable of having carnal knowledge, and evidence cannot be received to show that he is capable in point of fact. He cannot therefore be convicted, as a principal in the first degree, of rape; but he may, as in the case of other felonies, be convicted as a principal in the second degree if he aids and assists in the commission of the offence. For the same reason a woman may be convicted as a principal in the second degree of rape. A boy under the age of fourteen may be convicted of an indecent assault.

Carnal  
knowledge  
of a child.

38. Carnal knowledge<sup>3</sup> or attempted carnal knowledge of a girl under the age of sixteen is an offence even though the girl consents.<sup>4</sup>

Before 1922, if the girl was over thirteen it was a sufficient defence to show that the accused had reasonable cause to believe that she was over sixteen. By the Criminal Law Amendment Act, 1922,<sup>5</sup> this defence was abolished except in cases where the accused is under twenty-four and has not previously been charged with this offence. The prosecution for the offence must be commenced within nine months from the date of the commission of the offence.

If the girl is under thirteen, it is no excuse, whether the offence has been committed or only attempted, that the offender believed that the girl was above the specified age, if she was really below it.

If the girl upon whom the offence was committed or any other child of tender years tendered as a witness does not understand the nature of an oath, her evidence may be received though not on oath if the court is of opinion that the girl or child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but no person may be convicted in any such case unless such unsworn evidence is corroborated by some other material evidence in support of it implicating the accused; and the witness will be liable to be punished for perjury for giving false evidence exactly as if he or she had been sworn.<sup>6</sup>

<sup>1</sup> See also para. 25.

<sup>2</sup> Though not guilty of rape, he is guilty of an offence punishable with two years' imprisonment, if at the time he knew she was an idiot or imbecile.

<sup>3</sup> For definition see para. 37.

<sup>4</sup> Of course, if the girl does not consent the offence becomes rape.

<sup>5</sup> 12 & 13, Geo. V, c. 56, s. 2.

<sup>6</sup> See Ch. VI, para. 90.

**39.** The offence of sodomy is committed when a male has carnal knowledge of an animal or of a human being "per anum." Penetration is required, as in the case of rape, to constitute carnal knowledge. But it is not necessary to prove that the offence was committed against the consent of the person upon whom it was perpetrated; both agent and patient (if consenting) are equally guilty. If the evidence upon this charge is insufficient to justify conviction for the full offence, the accused person may be found guilty of an attempt to commit it.

**40.** It is an offence for a male person, either in public or private, to commit, or to be a party to the commission of, any act of gross indecency with another male person; or to procure the commission of any such act. Acts of indecency.

It is also an offence to do any grossly indecent act in a public place in the presence of two or more persons, or to publicly expose the person, or exhibit any disgusting object.

**41.** Inasmuch as disgraceful conduct of an indecent or unnatural kind is, in itself, an offence under section 18 (5) of the Army Act, most of the charges of indecency which are brought before courts-martial will be laid under that section and not charged as civil offences. Disgraceful conduct.

#### (vi) *Homicide.*

**42.** If the death of a human being results from any action of any person, that person is said to have committed homicide. Homicide.

A person is criminally responsible for homicide unless he can show some legal excuse, *e.g.*, that it was justifiable or excusable. The consent of the person killed is no excuse.<sup>1</sup>

Death must result, either directly or indirectly, from the act. Whether it does so or not must depend on the circumstances of the case, but if the death occurs more than a year and a day after the act, the law presumes that death did not result from the act but from some other cause, and the accused cannot be made responsible.

Further, a person is not responsible for causing death unless death naturally results from his conduct. For instance, if a person wounds another dangerously, and that other dies, whether from neglect of proper treatment, or from improper treatment applied in good faith for the purpose of effecting a cure, the person causing the injury is legally responsible for the death; on the other hand, if the wound is not dangerous in itself, but is rendered so by improper treatment, he is not responsible.

The death caused must be that of a human being. A child is considered to become a human being as soon as it has wholly proceeded in a living state from the body of its mother, and has an independent circulation, whether it has breathed or not, and whether the umbilical cord has or has not been severed; and a person is responsible for killing such a child, though the injuries of which it dies were inflicted by him or her before or during birth.

A person is guilty of causing death even if he merely accelerated the other's death, and it is no excuse that the person killed must have died very shortly from some other cause.

<sup>1</sup> As to when the use of force resulting, or possibly resulting, in death is justifiable, see para. 30.

**Ch. VII** The fact that the blame is shared by another will not relieve from responsibility a person contributing to the death. Thus, if two drivers are illegally racing their cars along a high road, and one or both of the cars run over a man and kill him, each driver is responsible for having caused the death.

Justifiable  
and excus-  
able  
homicide.

**43.** Homicide is justifiable (i) where the proper officer executes a criminal in strict conformity with his sentence; (ii) where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it; and (iii) where the homicide is committed in prevention of a forcible and atrocious crime.

Homicide is excusable (i) where a man doing a *lawful* act, without any intention of hurt, by accident kills another; and (ii) where a man kills upon a sudden encounter, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.

Murder.

**44.** The law presumes every homicide to be murder until the contrary appears. It will rest with the accused to prove such facts as may reduce the offence to manslaughter or excuse him from all criminal responsibility. If a person has unlawfully caused death by conduct which was intended to cause death or grievous bodily harm to *some* person, or even by an act, unlawful in itself, attended with probable serious danger and done with a mischievous intention to hurt people although no mischief is intended to any particular individual, he is guilty of murder.

The offence of murder is not confined to cases where the offender has deliberately intended to kill the particular person whom he has killed, though this is the most usual form of the crime. The law provides that many cases of homicide where there has been no premeditated desire to kill a particular person, or, indeed, any person at all, must be brought under the definition of murder if the offender is actuated by a form of guilty mind sufficiently wicked to constitute murderous malice. Thus, if A shoots at B intending to kill him but accidentally kills C instead, A commits murder. Or if a person intends to kill and does kill the next person whom he chances to meet without selecting any particular person, he is guilty of murder. So, also, if a person intends to commit a felony upon or do grievous bodily harm to another by means of an act which is likely to kill—*e.g.*, by beating him with an iron bar—and death results therefrom, it is murder.<sup>1</sup>

It is immaterial what may be the particular form of death, whether from poisoning, striking, starving, drowning or any other cause.

A person is guilty of murder if he unlawfully resists and kills any person who is lawfully endeavouring to execute the duties of an officer of justice, or the orders of some civil or military authority, provided that the offender has sufficient notice of the capacity in which the person killed is acting.

Letters  
threatening  
to murder.

**45.** Sending a letter threatening to murder, and even the delivery of such a letter, knowing its contents, is an offence.

Manslaughter.

**46.** It may be taken generally, that in all cases where a killing cannot be justified or excused, if it does not amount to murder, it is

<sup>1</sup> See specimen charge No. 96, p. 732.

manslaughter, and a person charged with murder can be convicted of manslaughter.<sup>1</sup> Ch. VII

If a person does an unlawful act of such a kind that a reasonable man would not have known that it was likely to cause death or serious injury, that person is guilty, if death results, of manslaughter and not of murder.

Where death results from negligence it must be shown, in order to justify a conviction for manslaughter, that the negligence was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime against the State and to conduct deserving punishment.

The offence is manslaughter if the act from which death results was committed under the influence of passion arising from extreme provocation by the victim.

No person is considered to give provocation to an offender merely by doing that which he has a legal right to do, or which the offender has incited him to do with the express purpose of providing himself with an excuse.

The provocation must be great, that is to say, such as might reasonably be expected to put an ordinary person not of an exceptionally passionate disposition into such a passion that he would lose his power of self-control.

Gestures, injuries to property, breaches of contract, or slight blows unaccompanied by special insult, are not considered a sufficient provocation.

Mere words of abuse are not considered to afford sufficient provocation, except, perhaps, in some extreme cases. Where, however, words are accompanied by a blow, though a slight one, the two may be taken into account together in estimating whether the provocation is sufficient.

47. It must be clearly established in all cases where provocation is put forward as an excuse, that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the nature of the weapon used, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

48. Attempts to murder<sup>2</sup> are only one degree less criminal than murder itself, and any person doing or attempting to do any act with intent to commit murder is guilty of an offence.

The act or attempt alleged, for instance, a wounding or stabbing, an attempt to fire a pistol<sup>3</sup> which does not go off, or any similar act or attempt, must be laid in the charge and proved as laid.

It must also be proved that the accused intended thereby to commit murder, which intent may be gathered from the nature of the act itself, or may be proved by other evidence, as for instance, by threats and words proved to have been used by the accused.<sup>4</sup>

<sup>1</sup> See specimen charge No. 96, p. 732.

<sup>2</sup> As to what amounts to an attempt, see para. 22.

<sup>3</sup> As to what amounts to an attempt to fire a pistol, see note to para. 35.

<sup>4</sup> Attempts to commit suicide do not amount to attempts to commit murder; such attempts should be dealt with under A.A. 38 (2).

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Conspiracy  
to murder.

49. It is an offence to conspire with or endeavour to persuade or propose to any other person to murder a third party, whether a subject of the King or not, and this even though no overt act is done or attempted.

(vii) *Theft and the Cognate Offences.*<sup>1</sup>

Theft or  
larceny.

50. A person steals<sup>2</sup> who, without the consent of the owner, fraudulently and without a claim of right made in good faith, "takes" and "carries away" anything "capable of being stolen"<sup>3</sup> with intent, at the time of such taking, permanently to deprive the owner thereof.

For the purposes of this definition, the expression "takes" includes obtaining possession (i) by any trick; (ii) by intimidation; (iii) under a mistake on the part of the owner, with knowledge<sup>4</sup> on the part of the taker that possession has been so obtained; (iv) by finding, where at the time of finding the finder believes that the owner can be discovered by taking reasonable steps. The expression "carries away" includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached. And the expression "owner" includes any part owner, or person having possession or control of, or a special property<sup>5</sup> in anything capable of being stolen.

Explan-  
ation of  
definition.

51. No attempt can be made here to deal fully with these definitions, but the following notes may be useful.

If the "owner" (the person in possession or control, &c.) consents to the taking, there is no theft; but consent obtained by force or fraud will be no defence. In this connection, however, it is important to distinguish between a transfer of "possession" only, and a transfer of "property" in the goods taken<sup>6</sup>. If A by false pretences induces B to give him possession only of an article, and then without B's consent appropriates it to himself, this is "theft"; but if he so induces B to transfer to him not only the possession of, but also the property in, the article, this is "obtaining by false pretences" (see para. 57 *post*).

The article must be taken fraudulently and without any colour of right. If it is taken under the supposition, honestly enter-

<sup>1</sup> See also Ch. III, paras. 30-40.

<sup>2</sup> Larceny Act, 1916, s. 1. This was the first statutory definition of "larceny"; it reproduced the effect of numerous judicial decisions as to what constituted larceny by the common law of England.

<sup>3</sup> Everything which has value and is the property of any person (and if adhering to the "reality" then after severance therefrom) is "capable of being stolen," subject to two qualifications, viz: (i) that things attached to or forming part of the "reality" cannot be stolen by the person who severs them, unless after severance he has abandoned possession thereof; and (ii) that the carcass of a wild beast or bird (not reduced into possession while living) cannot be stolen by the killer, unless after killing he has abandoned possession thereof. (Larceny Act, s. 1.) "Reality" means, speaking broadly, the land and any permanent structure thereon. The new definition reproduces the old common law rule that things attached to the reality could not be the subject of "larceny" until after severance and abandonment. A man who steals or who with intent to steal severs, cuts, roots up, &c., fixtures, trees, plants, crops, &c., is punishable under a later section (s. 8) of the Act. See specimen charge of stealing, No. 103, p. 733.

<sup>4</sup> *i.e.*, knowledge at the time; see next paragraph.

<sup>5</sup> "Special property"; see next note.

<sup>6</sup> The "property" in goods is obtained if the person obtaining them becomes the owner. Thus, if A sells goods, the property in them passes to the purchaser; if he pawns them, the pawnbroker obtains possession of them (and a "special" or temporary property in them), but the permanent property in them does not pass to him.



tained, that the taker has an immediate<sup>1</sup> right to possession, the taking is not fraudulent and there is no theft. The fraudulent intention must exist at the time when the owner is deprived of possession without his consent. If the original taking is innocent, a subsequent fraudulent misappropriation will not retrospectively convert the taking into theft.

*Stealing by a trick.*—Examples of this are the forms of cheating known as “ringing the changes,” and “ring dropping.”

*Stealing under mistake on the part of the owner.*—A familiar instance of this is where A meaning to give to B a penny in fact hands to him a half-crown, and B knowing at the time of receiving it that a mistake has been made, keeps the coin without saying anything.

*Stealing by finding.*—No one can steal an “abandoned” article. If a person finds an article and appropriates it, he is not guilty of stealing it if the former owner had really abandoned it, or if the taker honestly believed that he had abandoned it, or if the taker honestly believed that he could not find the owner by taking reasonable steps. The belief referred to is his belief at the time of the finding.

*“Carries away.”*—The smallest amount of moving, so long as there is a severance of the property from the possession of the person from whom it is taken, is sufficient. Thus, taking goods out of a box and laying them on the floor is sufficient to constitute theft if the other elements of theft exist. The line between what is and what is not a sufficient taking is extremely fine, and if there is any doubt as to whether the taking is sufficient, a jury, and under section 56 (6) of the Army Act a court-martial, may convict of an attempt to steal only.

The property must be taken with the intention of permanently depriving the possessor of it. Whether such an intention existed is a question of fact to be decided in the light of all the circumstances of the case.

52. As “deprivation of possession” is an essential element of the offence, a person cannot, in general, steal anything which is already in his possession. There is, however, a statutory provision to meet the cases of a “bailee” and a part owner by which a person may be guilty of stealing a thing, notwithstanding that he has lawful possession thereof, if being a bailee or part owner thereof, he fraudulently converts the same to his own use or to the use of any person other than the owner.<sup>2</sup> Speaking generally, a person is a “bailee” of an article when it is delivered to him for the purpose of ultimately re-delivering it,<sup>3</sup> or delivering it to some other person. Thus, if a man hires a bicycle for a day he becomes “bailee” of it; if he sells it, then although he had at the time lawful possession of it, his act is theft. This, however, applies only where the obligation is to re-deliver or deliver the specific article. For instance, if A is entrusted with a sum of money, his obligation would ordinarily<sup>4</sup> be, not to return the

<sup>1</sup> A person who has pawned his watch has no immediate right to possession of it (*i.e.*, until he “redeems” it); he may therefore be guilty of “stealing” it, if he takes it from the pawnbroker without repaying the loan.

<sup>2</sup> Larceny Act, 1916, s. 1.

<sup>3</sup> *e.g.*, after doing repairs to it, or after using it.

<sup>4</sup> It might be otherwise if the coins were deposited with him in a sealed package.

Ch. VII identical coins, but only an equivalent sum; and he would not be guilty of "stealing" if he wrongfully appropriated it to his own purposes. He would, however, be guilty of "fraudulent conversion," another offence dealt with by the Larceny Act.<sup>1</sup>

Embezzlement.

53. Special reference must be made to the doctrine as to "possession" in the case of clerks or servants. Possession by a servant of anything on behalf of his master is considered to be the possession of the master or the possession of the servant according to the circumstances in which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow servant to whom the master has given the custody, the servant will have no real possession of the thing, the possession remaining in the master. In this case misappropriation of the thing by the servant will be theft. If, however, a servant receives anything from a stranger on his master's account, the servant will have possession of the thing, and the master will have no possession until the servant does some act by which the possession is transferred from him to the master. In this case misappropriation by the servant (before such transfer) is called "embezzlement".<sup>2</sup> The two offences of "theft by a servant" and "embezzlement by a servant" are dealt with in the same section of the Act, and the legal distinction between them is of comparatively little practical importance, because if on a charge of theft the evidence proves embezzlement, the jury<sup>3</sup> can convict of embezzlement; and *vice versa* on a charge of embezzlement can convict of theft.

Evidence of embezzlement.

54. By "clerk" or "servant" is meant a person who is acting under and bound to carry out the instructions of his master or employer not merely as to what to do, but also as to how and when to do it. The employment may be either general, or for a specified time, or for the performance of a single act.

On a charge of embezzlement, the fraudulent misappropriation of the property may be inferred either from the fact that the accused person has not handed it over in the ordinary course, or from the fact of his having falsely accounted for it, or from the fact of his having absconded, or in any similar way. It must, however, be remembered that none of these facts in itself constitutes the offence of embezzlement; each is *evidence* only of the fraudulent misappropriation.

Embezzlement by persons in public service.

55. A somewhat similar offence is committed where a person who is employed in the public service steals any chattel, money, or valuable security belonging to His Majesty, or entrusted to him by virtue of his employment, or embezzles or fraudulently disposes of any such chattel, &c., for any purpose other than the public service.

Fraudulent conversion.

56. The offence of "fraudulent conversion"<sup>4</sup> to which reference is made in paragraph 52 is committed by every person who (i) being

<sup>1</sup> s. 20 (iv); and see para. 56 (below).

<sup>2</sup> i.e., the fraudulent misappropriation of the whole or any part of any property delivered to, or received, or taken into possession by him for or in the name or on account of his master or employer; Larceny Act, 1916, s. 17. Embezzlement in the narrow sense is confined to acts of misappropriation committed by persons in the position of clerks and servants; but as pointed out in para. 34 of Chapter III it is used in a wider sense in connection with military offences under the Army Act, i.e., those dealt with by ss. 17, 18 (4).

<sup>3</sup> Larceny Act, 1916, s. 44 (2); so, too, can a court-martial, A.A. 56 (1) (2).

<sup>4</sup> See specimen charge No. 104, p. 733.

entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof, or (ii) having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof. Ch. VII

Many offences of fraudulent conversion as above defined would, in the case of persons subject to military law, amount to the military offence of fraudulent misapplication under s. 17 or s. 18 (4) of the Army Act.

57. As has been said (para. 51), when a person obtains not only the possession of, but also the property in, goods by fraud, the offence is not theft but obtaining goods by false pretences.<sup>1</sup> Obtaining  
by false  
pretences. The elements constituting the offence of obtaining goods by false pretences are very similar to those constituting theft.

Any chattel, money, or valuable security may be the subject of the offence of "obtaining by false pretences" except such things as are not the subject of theft at common law.<sup>2</sup>

There must have been an intention of depriving the owner permanently of the thing obtained, and the intention must have been fraudulent, though it is not necessary to allege an intention to defraud any particular person.

The goods must have been obtained either directly or indirectly by the pretence, that is to say, they would not have been obtained but for the pretence. If the person from whom the goods are obtained is not deceived by the pretence, but knows it to be false, the goods are not obtained by false pretences, but in such a case the person making the false statement may be convicted of attempting to obtain the goods by false pretences.

The false pretence must be a false representation, express or implied, as to the past or present existence of some fact; a mere promise as to future conduct, or representations as to future expectations are not sufficient. For instance, the giving of a cheque in exchange for goods is a representation that the drawer has an account at the bank on which the cheque is drawn, and that that account is in such condition that in the ordinary course of events the cheque will be met. If the drawer knows that these conditions do not exist the giving of the cheque is in law a false pretence. But representations of future expectations, as distinct from representations of existing facts, do not constitute a false pretence.

The false pretence may be made in any way, either by words, by writing, or by conduct; for instance, if a person, not being an officer, represents himself to be so by wearing an officer's uniform, and thus obtains goods from a tradesman, this is a false pretence

<sup>1</sup> See specimen charge No. 105, p. 733.

<sup>2</sup> The following classes of things are not the subject of theft at common law:—

- (1) Things abandoned by the owner.
- (2) Land, and things permanently attached to land
- (3) Title deeds, bonds, &c.
- (4) Wild animals (including game).
- (5) Base animals, such as dogs, ferrets, &c.

But the stealing of plants and shrubs growing in gardens, &c., title deeds, and all animals which are usually kept in confinement, including dogs, has been made punishable by statute.

**Ch. VII** by conduct. It may be made direct to the person to be defrauded or to his agent; but a pretence made to a stranger in the hope that it will be repeated to, and acted on by, the intended victim is insufficient.

It is no excuse to say that a person of common prudence could easily have found out that the pretence was untrue, or to say that the existence of the alleged fact was impossible, or that it was intended to make compensation for the goods in the future.

Conviction of theft on charge of obtaining by false pretences.

58. If a person is charged with obtaining goods by false pretences, and it appears that he obtained them under circumstances which in law amount to stealing, the jury may nevertheless convict him of the offence actually charged. If he is charged with simple stealing and the evidence proves "obtaining by false pretences," they may convict him of the latter offence. A court-martial has the same power under s. 56 (6) of the Army Act.

Robbery.

59. "Robbery" is an aggravated form of stealing from the person accompanied by violence or threats of injury to the person robbed or to his property.<sup>1</sup> If the robber is armed with an offensive weapon or has one or more companions (even if all are unarmed) operating with him at the time of the robbery, he is liable, upon conviction, to be sentenced to penal servitude for life. The same punishment may be awarded if at the time of, or immediately before, or immediately after, the robbery the offender uses personal violence to the person robbed. The maximum punishment for robbery, if not aggravated by the circumstances mentioned above, is fourteen years' penal servitude.

The violence or threats must be intentionally used for the purpose of overcoming or preventing resistance, or of extorting the thing stolen. Violence used merely for the purpose of obtaining possession of the thing, such as snatching a watch out of a pocket, is not sufficient to constitute robbery.

A person charged with robbery with violence may be found guilty of robbery (without aggravation) or of an assault with an intent to rob or of stealing from the person or of simple stealing.

Demanding with menaces; extortion.

60. It is an offence to demand from any person with menaces or by force any property capable of being stolen, with intent to steal it. "Menaces" include threats of injury to persons or property, and threats which would involve injury to a third person intended to be injured, such as would induce a person to whom the menaces are addressed to part with money or valuable property. The menaces may be by words or gestures.

There are various other offences of a similar kind, such as accusing or threatening to accuse a person (whether living or dead) of crimes of a particular kind with intent to extort any property or valuable thing; or, with a like intent, publishing or threatening to publish a libel upon any person or threatening to publish any matter touching any other person (whether living or dead).

Burglary.

61. Offences closely allied to thefts and robbery are those of burglary, housebreaking and stealing in a dwelling-house. Burglary can only be committed during the night, i.e., between 9 p.m. and 6 a.m., and it can only be committed in respect of

<sup>1</sup> See specimen charge No. 100, p. 733.

a dwelling-house.<sup>1</sup> It must be proved that the offender broke and entered the dwelling-house of a person with intent to commit a felony therein or broke out of such dwelling-house having either entered it with intent to commit a felony<sup>2</sup> or after actually committing a felony. The maximum punishment for burglary is penal servitude for life.

A person is considered to "enter" a house as soon as he introduces into the house any part of his body or any instrument held in his hand for the purpose of intimidating anyone in the house or of removing any goods; the introduction into the house of a housebreaking tool is not sufficient if it be merely part of the act of breaking into the house.

A person is considered to "break" a house—

- (1) if he breaks any part, internal or external, of the building itself, or
- (2) if he opens by any means whatever<sup>3</sup> any closed door, window, or other thing intended to cover openings to the house, or leading from one part of it to another, or
- (3) if he gets down the chimney, or
- (4) if he gains entrance to the house by threats, artifice, or collusion.

62. The offence of housebreaking<sup>4</sup> falls under two heads:— House-breaking.

(a) *Housebreaking and committing felony.*<sup>5</sup>

This consists in breaking and entering a dwelling-house or various other buildings (*e.g.*, shop, office, garage, or building belonging to His Majesty) and committing any felony therein; or breaking out of such house or buildings after committing a felony therein. This offence can be committed at any time of the day or night.

*b) Housebreaking with intent to commit felony.*<sup>6</sup>

This consists in entering (breaking is not necessary) any dwelling-house between 9 p.m. and 6 a.m., with intent to commit a felony therein; or, with a like intent, breaking and entering, at any time of the day or night, any dwelling-house or building of the kind mentioned in (a).

63. It is an offence, to which a maximum punishment of four- Stealing in a dwelling-house.teen years' penal servitude is attached, to steal in any dwelling-house any chattel, money or valuable security if the value of the property stolen amounts to five pounds; or if the offender by any menace or threat puts any person in the dwelling-house in bodily fear, whatever be the value of the property stolen.

64. It is also an offence—

- (1) to be found by night<sup>7</sup> in possession of housebreaking tools unless a lawful excuse for such possession can be given; Other offences.

<sup>1</sup> A dwelling-house is any permanent building or separate part thereof in which the owner or tenant, or any one with their consent, habitually sleeps at night. See specimen charge of burglary No. 97, p. 732.

<sup>2</sup> As to what offences are felonies, see table at the end of the chapter.

<sup>3</sup> This includes opening a shut window or door, but not pushing an open window or door further open.

<sup>4</sup> See specimen charges 98, 99, p. 732.

<sup>5</sup> Night means the interval between nine at night and six in the morning.

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- (2) to be found by night<sup>1</sup> armed with an offensive weapon with the intention of breaking into a building and committing felony therein;
- (3) to be disguised at night<sup>1</sup> with the intention of committing felony;
- (4) to be found by night<sup>1</sup> in any building with the intention of committing felony therein.

Receiving  
stolen  
goods, &c.

65. A person who receives goods with knowledge that they have been stolen or obtained by another<sup>2</sup> in any way whatsoever under circumstances which amount to felony or misdemeanour commits the offence of "receiving."<sup>3</sup>

The guilty knowledge of the receiver must be established; it is not enough to prove that he merely suspected the goods to have a tainted origin. And the knowledge must have existed at the moment of receiving; if he took them innocently no subsequent guilty knowledge will suffice. The fact that he bought them much below their value, or that he falsely denied his possession of them would be *evidence* of guilty knowledge.

A person is considered to receive the goods as soon as he obtains control over them. But actual manual possession is not necessary; it is sufficient if the goods are in the actual possession of a person over whom the receiver has a control so that they would be forthcoming if he ordered it.

The  
doctrine  
of recent  
possession.

66. If a person is found in possession of goods recently stolen, there is a strong presumption that he stole them or received them with knowledge that they were stolen.<sup>2</sup> The *onus* of proving guilty knowledge always remains upon the prosecution, and upon the prosecution establishing that the accused was in possession of goods recently stolen, a jury or a court-martial may, in the absence of any explanation by the accused of the way in which the goods came into his possession, which might reasonably be true, find him guilty; but if an explanation is given which the jury or a court-martial think might reasonably be true, and which is consistent with innocence, although they were not convinced of its truth, the accused is entitled to be acquitted, inasmuch as the prosecution has failed to discharge the duty cast upon it of satisfying the court beyond reasonable doubt of the guilt of the accused.

Cheating,  
&c.

67. The following are offences somewhat similar to theft, embezzlement, and obtaining money by false pretences:—

- (1) Obtaining money by cheating at cards, &c.;
- (2) Fraudulently obtaining the execution of a valuable security, or affixing a name on any paper with a view to its being subsequently dealt with as a valuable security;
- (3) Cheating, by a deceitful practice affecting the public, *e.g.*, selling by false weights;
- (4) Conspiring to cheat and defraud; that is, an agreement by two or more persons to do an act with the intention of

<sup>1</sup> Night means the interval between nine at night and six in the morning.

<sup>2</sup> Where it is clear that an accused is either the thief or a receiver, it is wrong to convict him of receiving unless there is something in the evidence to suggest that he was not the actual thief. *R. v. Evans* [1916] 12 Cr. App. Rep. 8.

<sup>3</sup> See specimen charge No. 103, p. 733.

- defrauding the public or any person or class of persons, Ch. VII  
 or to extort money or goods from any person ; —  
 (5) Fraudulently obliterating any mark denoting the property  
 of His Majesty in any stores.

(viii) *Forgery; Perjury; Personation.*

68. Forgery<sup>1</sup> is the making of a false document in order that <sup>Forgery.</sup> it may be used as genuine. A document is false if it or any material part of it purports to be made by or on behalf of a person who did not make it or authorise its making, and in particular, if any material alteration by addition, insertion or obliteration has been made in it; or if the whole or some material part of it purports to have been made by or on behalf of a fictitious or deceased person. A document is also considered to be false, though made by a person in his own name, if it is so made with the intention that it should pass as being made by someone else. These definitions must not be taken to be exhaustive.

For forgery to constitute an offence there must be an intent to defraud or deceive; in the case of some documents an intent to defraud is essential; in the case of others an intent either to defraud or to deceive must be charged and proved.

To forge wills, deeds and banknotes, and such documents as valuable securities, cheques, receipts or requests for the payment of money, and insurance policies is a felony punishable in the case of the three first mentioned documents with penal servitude for life, and in the case of the other documents with penal servitude for a term not exceeding fourteen years; in all these cases an intent to defraud is essential.

Forgery of a large number of specific documents of an official nature such as birth or death certificates, court registers, &c., is also a felony, the maximum sentence for which is penal servitude for either fourteen or seven years according to the nature of the document forged. In these cases an intent to defraud or to deceive is essential.

The forging of various documents where such forgery does not amount to a felony is a misdemeanour, punishable with imprisonment; in these cases an intent to defraud is essential, except in the case of public documents when an intent either to defraud or to deceive must be charged and proved.

A false signature to a genuine document or a genuine signature to a false document amount equally to forgery if the necessary intent is present.

It is not essential, in order to constitute the offence of forgery, that the false document should be completed, or that it should be in such a form as would be binding in law; though, if a person is charged with the forgery of any particular instrument, it must be shown that the document has such a resemblance to it as would be likely to deceive an ordinary person:

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<sup>1</sup> See the Forgery Act, 1913, and specimen charge No. 106, p. 734.

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The fraudulent intention may be inferred from the document itself or proved by external evidence. The intention must be that either—

- (a) the document should be used or acted on as genuine; or
- (b) the actions of some person should be influenced by the belief that it is genuine.

Uttering  
forged  
documents.

69. A person is said to "utter" a forged document if he, knowing it to be forged, delivers or disposes of it, or tenders it in payment or exchange, &c.<sup>1</sup> If the document is one the forging of which is a felony, the uttering of it is also a felony; if the forging of it is a misdemeanour, the uttering of it is also a misdemeanour.

The intent to defraud or to deceive (as the case may be) which is an essential element of the offence of forging a particular document is also an essential element in the offence of uttering it.

The same punishment may be awarded for the uttering as for the forgery of any particular document.

Possession  
of forged  
notes, &c.

70. The mere purchase or possession of forged banknotes, and some similar documents (whether complete or not) with the knowledge that they are forged, is in itself an offence.

It is an offence to make, use, or knowingly be in possession of any banknote paper or any instruments or contrivances for making banknotes and similar documents.

It is also an offence to demand, receive or obtain any property or money upon or by virtue of any forged instrument, knowing the same to be forged.

Abettors,  
&c., in  
forgery, &c.

71. Persons who aid or abet the commission of an offence mentioned in paras. 68–70 are liable to be tried and punished as principals.

Perjury.

72. Perjury may shortly be defined as the wilful (*i.e.*, intentional) giving of evidence which he knows to be false or does not believe to be true by a witness or interpreter in a judicial proceeding.<sup>2</sup> The term "judicial proceeding" includes a proceeding before any court, tribunal, or person having, by law, power to hear, receive and examine evidence on oath.

The witness must have been duly sworn by the court or officer, *i.e.*, he must either have taken the oath or made an affirmation or declaration.

The false evidence must be an assertion as to some matter of fact, opinion, belief, or knowledge, which the witness does not believe to be true, or as to the truth of which *he knows* that he is ignorant.

The assertion must be as to some point which is material, *i.e.*, it must be as to some point which affects, directly or indirectly, the probability of some question which is to be determined by the proceeding in the course of which it is given, or the credit of some witness giving evidence in the course of the proceeding.

The parts of the evidence alleged to be false should be set out in the particulars of the charge, and in order to prove a charge of perjury it is not sufficient to call one witness only, but the evidence of such a witness must be corroborated either by the evidence of another witness, or by the proof of material and relevant facts confirming it.

<sup>1</sup> See specimen charge No. 107, p. 734.

<sup>2</sup> See the Perjury Act, 1911.



The civil offence of perjury, as such, will rarely come before courts-martial, inasmuch as the giving of false evidence before a court-martial or any court or officer authorised by the Army Act to administer an oath is made a military offence when committed by a person subject to military law.<sup>1</sup> Ch. VII

S. 126 of the Army Act provides for the offence of perjury when committed before a court-martial by a person not subject to military law.

The making of a false declaration in the cases specified in s. 142 of the Army Act is declared to be perjury, and subject to the same penalties.

73. Under the False Personation Act, 1874, the false and deceitful personation of any person with the intention of fraudulently obtaining any property whatever is an offence. Personation.

By s. 142 of the Army Act a person is deemed guilty of personation who falsely represents himself to any military, naval, air-force, or civil authority to belong to, or to be a particular man in, or who has been in, the regular, reserve, or auxiliary forces.<sup>2</sup>

#### (ix) *Malicious Damage to Property.*

74. Numerous offences come under the category of malicious injuries to property. Malicious injury to property.

The essence of the offence is injury to the property of another; it is immaterial whether the offender is himself benefited by the act or not.

Such acts are offences if done unlawfully and maliciously.

A person is considered to cause an injury unlawfully and maliciously if he wilfully causes it without any lawful excuse; i.e., if he causes it by an act which he must know will probably cause it, or is reckless whether he causes it or not, and if he has not either a legal right to act as he does, or a *bona fide* and reasonable belief that he has such a right. Generally speaking, the act itself justifies a presumption of malice until the contrary is shown, e.g., that it was due to negligence or accident. For instance, a deliberate trespass on land whereby substantial injury is caused to crops amounts to malicious injury to property. But the charge must allege that the injury was caused maliciously. Unless the evidence clearly shows that the damage was caused maliciously, a charge of malicious injury should not be laid.

75. Of the various instances of malicious injury the most important is arson which consists in unlawfully and maliciously setting fire to buildings or to certain peculiarly inflammable kinds of property. To set fire to one of His Majesty's dockyards or to any ship of war therein is still a felony punishable with death. The offences of setting fire to a church, railway-station, public building, stack of corn, ship or coal-mine are punishable with penal servitude for life; the same punishment may be awarded to a person who sets fire to a dwelling-house when any person is therein, or, with intent to injure or defraud, to any house, office, shop, shed, &c., whether in the possession of the offender or any other person. To set fire to or to attempt to set

<sup>1</sup> See A.A., 29. See also A.A. 46 (6), 47 (4), 70 (5) (6), 72 (1), R.P., 124 (H), 125 (H).

<sup>2</sup> As to the punishment for this offence, see the section and note thereto.

**Ch. VII** fire to other buildings or their contents or to growing crops is an offence punishable with penal servitude for fourteen years.

It is not a necessary element of the crime of arson that malice should have been shown against the person in respect of whose property the offence was committed. "Maliciously" means that the offender intended that the building should be set on fire or that he acted with recklessness, not caring whether or not it took fire though he realised that such a consequence was almost inevitable.

The sending of a letter threatening to commit arson is an offence.

Other  
examples  
of malicious  
damage.

**76.** Amongst other offences mentioned in the Malicious Damage Act, 1861, are the following:—

- (i) Destruction of buildings with explosives;
- (ii) Riotous or tumultuous demolition of or damage to houses;
- (iii) Destruction of or damage to machinery or ships;
- (iv) Destruction of bridges, telegraphs, &c.
- (v) Obstruction of railways;
- (vi) Killing or maiming of certain animals.

(x) *Miscellaneous Offences.*

Bigamy.

**77.** Bigamy is committed by a person who, being already married to one person, goes through the form of marriage with another person during the life of the former husband or wife whether the second marriage has taken place in England or Ireland or (except in the case of a person who is not a British subject) elsewhere.

It is a good defence to a charge of bigamy that the wife or husband of the accused has been continually absent from such person for seven years then last past, and has not been known by that person to be living within that time; the burden of proving such knowledge is upon the prosecutor when the fact that the parties have been continually absent for seven years has been proved. It is also a good defence if the accused can show that even though the seven years have not elapsed before the second marriage, he or she had reasonable grounds for believing that his or her wife or husband was dead at the time of the second marriage. Proof that the accused was divorced from the bond of his first marriage or that the first marriage was null and void provides a complete defence to a charge of bigamy.

A person who, being unmarried, goes through the form of marriage with another person, knowing that person to be married to someone else, may be charged with and convicted of aiding and abetting the felony of bigamy.

Treason.

**78.** The only forms of treason which need here be mentioned are—

- (1) Levying war against the Sovereign in any of His dominions.
- (2) Aiding the enemies of the Sovereign.

Certain other acts of treason (namely, compassing to levy war against the King, and compassing to move any foreigner to invade the King's dominions) can, under an Act of 1848, be also treated as felonies; these acts are commonly known as "treason-felonies," and are so described in s. 41 of the Army Act.

Conspiracy.

**79.** Conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful

means. The mere intention to do such an act is not a conspiracy. **Ch. VII**  
**An agreement to carry out a crime, even if the crime is not afterwards committed, is a conspiracy.** Unless two persons, at least, are found to have combined there can be no conviction, but a person may be charged with conspiracy with persons unknown or persons who cannot be brought before the court or who are dead.

The main forms of conspiracy are :—

- (i) To commit an offence punishable by law ;
- (ii) To cheat and defraud ;
- (iii) To prevent or obstruct the course of justice :

**80.** It is an offence :—

- (a) To try to dissuade witnesses from giving evidence, in order to obstruct the course of justice ;
- (b) To obstruct the execution of any legal process ;
- (c) To conceal or procure the concealment of a felony<sup>1</sup> ;
- (d) To enter into an agreement for valuable consideration to refrain from prosecuting a person for a felony<sup>1</sup>, or to show favour to the accused in any such prosecution.

Offences relating to the obstruction of justice.

**81.** Offences relating to escape from civil custody would **Escape.**  
 probably never be tried by court-martial, and it seems only requisite to observe here that—

if a person assists any alien enemy who is a prisoner of war within His Majesty's dominions, whether in confinement or on parole, to effect his escape ; or

if a person (being a British subject) on the high seas assists any such prisoner of war who has escaped from His Majesty's dominions in his escape towards any other country ;

he is, in either case, guilty of an offence.

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<sup>1</sup> As to what offences are felonies, see table at end of chapter.

## TABLE OF OFFENCES AND PUNISHMENTS

**NOTE.**—(i) Only such offences as are dealt with in Chapter VII are included in this Table.  
 (ii) The second column states in the case of each offence the maximum "punishment assigned for such offence by the law of England" (see A.A. 41 (5)). Courts-martial cannot (A.A. 44, proviso (1B)) award a longer term of imprisonment than two years. It may be observed that in a few cases a heavier punishment than that stated in this column can be inflicted by sentencing the offender to "such punishment as might be awarded to him" for an offence under A.A. 40. (See A.A. 41 (5).) In all cases in the second column imprisonment may be with or without hard labour.  
 (iii) The minimum term of penal servitude which can be awarded is three years. Where penal servitude may be awarded, the court may, as an alternative, award imprisonment up to two years.  
 (iv) The third column shows the other offences of which an accused may be found guilty by civil court or court-martial under A.A. 56 (6).  
 (v) On a charge of felony or misdemeanour, the accused may be found guilty of an attempt to commit the offence charged.

Imp. = Imprisonment.

P.S. = Penal Servitude.

F = Felony. M = Misdemeanour.

Offence.	Maximum Penalty.	Other offences of which accused may be found guilty.	Paragraph in which described.
<b>Arson—</b>			
Buildings generally	F. P.S. 14 years		75
Church, coal mine, public building, station, &c.	F. P.S. life		"
Crops	F. P.S. 14 years		"
Dockyard, arsenal, H.M. Ships	F. Death		"
Dwelling-house with person therein	F. P.S. life		"
Goods in buildings	F. P.S. 14 years		"
Stack	F. P.S. life		"
Attempted, buildings generally, coal mine, ship	F. P.S. 14 years		"
Stack	F. P.S. 7 years		"
<b>Assault—</b>			
Common	M. Imp. 1 year		34
Indecent. See "Indecent Assault."			
Occasioning actual bodily harm	M. P.S. 5 years		35
On police officer in execution of his duty	M. Imp. 2 years	Common assault	"
With intent to commit felony	M. Imp. 2 years		"
" " sodomy	M. P.S. 10 years		"
" " resist lawful arrest, &c.	M. Imp. 2 years		"
See also "Robbery."			
<b>Attempt—</b>			
To commit crime generally	M. Imp. 2 years		22
" murder	F. P.S. life		48
" sodomy	M. P.S. 10 years		39
" See also "Arson," "Carnal Knowledge."			

<b>Bigamy</b> .. .. .	F. P.S. 7 years	77
<b>Buggery</b> See "Sodomy."		
<b>Burglary</b> .. .. .	F. P.S. life	61
	(1) Entering dwelling-house in the night with intent to commit felony. (2) Housebreaking. (3) Stealing in dwelling-house (if stealing alleged and property stolen is of value £5). (4) Simple stealing (if stealing alleged).	
<b>Carnal Knowledge—</b> Of girl under 13 .. .. .	F. P.S. life	38
	(1) Procuring unlawful carnal connection by threats, fraud or drugs. (2) Carnal knowledge of idiot or imbecile. (3) Indecent assault.	
Attempted, of girl under 13 .. .. .	M. Imp. 2 years	"
Of girl 13-16, or attempted .. .. .	M. Imp. 2 years	"
<b>Cheating—</b> At cards, games, &c. .. .. .	M. P.S. 5 years	67
Fraudulently obliterating marks on public stores .. .. .	F. P.S. 7 years	"
Fraudulently obtaining execution of a valuable security .. .. .	M. P.S. 5 years	"
The public .. .. .	M. Imp. 2 years	"
Conspiracy to cheat and defraud. See "Conspiracy."		
<b>Conspiracy—</b> Generally .. .. .	M. Imp. 2 years	79
To cheat and defraud .. .. .	M. Imp. 2 years	67
"murder .. .. .	M. P.S. 14 years	49
<b>Embezzlement—</b> By clerk or servant .. .. .	F. P.S. 14 years	53
"person employed in the public service .. .. .	F. P.S. 14 years	55
<b>Extortion.</b> See "Menaces, Demanding with."		
<b>False Pretences—</b> Fraudulently obtaining execution of a valuable security. See "Cheating." .. .. .	M. P.S. 5 years	57, 58
Obtaining chattel, money, valuable security, &c., by .. .. .		(See Ch. VII, para. 58).
.. credit by .. .. .	M. Imp. 1 year	57

Offence.	Maximum Penalty.	Other offences of which accused may be found guilty.	Paragraph in which described.
<b>Forgery—</b>			
Of official documents .. .. .	F. P.S. 7 years		68
„ registers of births, marriages, deaths, &c. . .	F. P.S. 14 years		„
„ valuable security, cheque, receipt, &c. . .	F. P.S. 14 years		„
„ will, bond, deed, banknote, &c. . .	F. P.S. life		„
Where the crime is not made a felony by statute	M. Imp. 2 years		69
Uttering forged document .. .. .	F. or M. As if guilty of forging.		
Demanding, &c., money on forged instrument ..	F. P.S. 14 years		70
Making or possession of paper or instruments for forgery	F. P.S. 7 years		„
Purchase or possession of forged banknotes, &c. .	F. P.S. 14 years		„
<b>Fraudulent Conversion of Property—</b>			
In general .. .. .	M. P.S. 7 years		56
High Treason. See “Treason.” .. .. .			
Housebreaking, &c.—			
And felony committed, by day or night .. ..	F. P.S. 14 years	(1) Stealing in dwelling-house (if stealing alleged and property stolen is of value £5). (2) Simple stealing (if stealing alleged).	62
With intent to commit felony entering dwelling-house at night .. .. .	F. P.S. 7 years		„
With intent to commit felony breaking and entering building by day or night .. .. .	F. P.S. 7 years		„
Being found by night in building with intent to commit felony .. .. .	M. P.S. 5 years or for second offence		64
Being disguised at night with intent to commit felony ..	M. P.S. 10 years		„
„ in possession of housebreaking tools by night ..			„
„ „ „ offensive weapon with intent to break ..			„
See also “Burglary.” and enter .. .. .			
<b>Indecency, Gross. See “Indecent Assault.”</b>			
<b>Inciting to Commit Crime</b>			
<b>Indecent Assault, &amp;c.—</b>			
On females .. .. .	M. Imp. 2 years	Common assault .. .. .	18
„ males .. .. .	M. Imp. 2 years	Common assault .. .. .	35, 36
Gross indecency with male person .. .. .	M. P.S. 10 years	Common assault .. .. .	35, 36
Indecent exposure of person .. .. .	M. Imp. 2 years	Common assault .. .. .	40
			„

[illegible]

Offences.	Maximum Penalty.	Other offences of which accused may be found guilty.	Paragraph in which described.
<b>Prisoners of War—</b>			
Assisting escape of			
Rape .. ..	.. ..		31
	.. ..		37
<b>Receiving</b> .. ..		(1) Carnal or attempted carnal knowledge of girl, imbecile or idiot.	
	.. ..	(2) Indecent assault.	65
	.. ..	(3) Incest.	
<b>Robbery—</b>			
Armed			59
With violence .. ..	.. ..	(1) Robbery.	"
	.. ..	(2) Assault with intent to rob.	"
	.. ..	(3) Stealing from the person.	"
	.. ..	(4) Simple stealing.	39
Not aggravated as above	.. ..	Assault with intent to rob .. ..	
Assault with intent to rob	.. ..		
" " " if armed	.. ..		
Sodomy (or Buggery)	.. ..		
Assault with intent to commit. See "Assault."	.. ..		
Attempt to commit. See "Attempt."	.. ..		
Stealing (Larceny)—			
Simple (including stealing by bailee)	.. ..		50-52
		(1) Embezzlement.	
		(2) False pretences	
From the person	.. ..		59
In dwelling-house	.. ..		63
Mail-bag, letters, &c., in course of transmission by post	.. ..		50-52
Treason, High	.. ..		78
Treason-felony .. ..	.. ..		"
Wounding—			
Unlawful	.. ..	Common assault .. ..	35
With intent to maim or do grievous bodily harm	.. ..	Unlawful wounding	"
" " " murder	.. ..	Unlawful wounding	"
Uttering Forged Document. See "Forgery."	.. ..		



## CHAPTER VIII

THE COURTS OF LAW IN RELATION TO OFFICERS  
AND COURTS-MARTIAL

1. A right of "appeal" in the ordinary sense of that term exists only where it is expressly conferred by statute: and no such right of appeal to any court<sup>1</sup> (whether civil or military) is given against the decision of a court-martial or against the award or order of an officer.

No appeal  
from courts-  
martial.

2. Notwithstanding the absence of a right of appeal, military tribunals are to a great extent subject to the control and supervision of the superior civil courts. The proceedings by which such control and supervision are exercised may be either criminal or civil. Criminal proceedings might take the form of a prosecution for assault, manslaughter or even murder; civil proceedings may be either preventive, *i.e.*, to restrain the commission or continuance of an injury, or remedial, *i.e.*, to afford a remedy for an injury actually suffered. Broadly speaking, the civil jurisdiction of the courts of law is exercised against a court-martial as a tribunal in applications for "prerogative" writs<sup>2</sup>, and against individual officers in actions for damages.

Control of  
superior  
courts over  
courts-  
martial.

3. Until recently considerable doubt existed as to the right of a person subject to military law to invoke the aid of the civil courts to redress grievances arising out of his service as an officer or soldier, or out of the authority exercised over him by his superiors. From a line of decisions starting in 1786 with the famous case of *Sutton v. Johnstone*<sup>3</sup> the deduction had been drawn that a civil court would not inquire at all into the exercise of military discipline. In 1919, however, these decisions were re-examined in the case of *Heddon v. Evans*<sup>4</sup> and the following principles were laid down:—(1) If the rights which an officer or soldier is seeking to enforce are given to him not by the common law, but only by military law—if, for example, they concern only his rank, promotion or emoluments—it may well be that he can seek his remedy in the military code alone; (2) if such rights are fundamental common law rights—such as immunity of person or liberty—then, save in so far as they are taken away by military law, they may be asserted in the ordinary courts; (3) in the case of such fundamental rights, distinction is to be drawn between acts done in excess of, or without, jurisdiction, and acts done within jurisdiction but maliciously: "First, a military tribunal or

Grounds  
for invoking  
aid of civil  
courts.

<sup>1</sup> It is open to any officer or soldier who considers himself aggrieved by the finding or sentence of a court-martial to forward a petition to the confirming or any reviewing authority through the usual channels (K.R. 666). Independently of any such petition, the proceedings of all general and district courts-martial before being filed in the office of the Judge-Advocate-General are carefully reviewed there as a matter of course with a view to detecting any illegality or miscarriage of justice. In the case of illegal or excessive punishments awarded by a commanding officer or by an authority dealing summarily with a charge under s. 47 of the Army Act, R.P. 10 provides for their cancellation, variation or remission by superior military authority.

<sup>2</sup> *i.e.*, the writs of *Mandamus*, *Prohibition*, *Certiorari* and *Habeas Corpus*.

<sup>3</sup> See para. 40, *post*.

<sup>4</sup> See para. 48, *post*.

**Ch. VIII** — officer will be liable to an action for damages if when acting in excess of or without jurisdiction, it or he does, or directs to be done, to a military man, whether officer or private, an act which amounts to assault, false imprisonment or other common law wrong, even though the injury purports to be done in the course of actual military discipline. Secondly, if the act causing the injury to person or liberty be within jurisdiction and in the course of military discipline no action will lie upon the ground only that such act has been done maliciously and without reasonable and probable cause."

Juris-  
diction,  
limits of.

4. The jurisdiction of any tribunal may be limited by conditions as to its constitution, as to the persons whom or the offences which it is competent to try, and as to the sentences which it is empowered to award, or by other conditions which the law makes essential to the validity of its proceedings and judgments. If it fails to observe these essential conditions, it acts without jurisdiction or in excess of jurisdiction, as the case may be.

The jurisdiction of an army officer or court-martial to try and punish offenders is strictly limited by the military code of law which confers it, and to which an individual impliedly undertakes to submit when he joins the army. If they disregard the provisions and limitations of such code, they act without or in excess of their jurisdiction.

Thus, a commanding officer or a court-martial will act without jurisdiction if they deal with a person not amenable to military law as if he were so amenable; so, too, will a commanding officer who punishes a warrant officer, or a junior officer who assumes to himself the punitive powers of a commanding officer. A court-martial will act without jurisdiction if it is not properly convened, or is not properly constituted; if for instance the number of members is below the legal *minimum*, if the members are not duly qualified to act, or if the president is not of the proper rank, or has not been properly appointed.<sup>1</sup> An officer or court-martial will act without jurisdiction if they convict a man of an offence which is not an offence under the Army Act, or (save as provided by s. 56) of an offence different from that with which he is charged. An officer who confirms the proceedings of a court without having authority to do so acts without jurisdiction; and an officer who (with authority) confirms proceedings is equally responsible with the members, if they have acted without, or in excess of, jurisdiction.<sup>2</sup>

A court which awards a heavier punishment than it has authority to award exceeds its jurisdiction. There is old authority<sup>3</sup> also for the proposition that jurisdiction is exceeded if it be exercised with cruelty or oppression amounting to an abuse of it; but it may be doubted whether such abuse of jurisdiction can really be distinguished from malicious exercise of jurisdiction.

It has been said that "in testing the legality of sentences passed under the provisions of the Army Act, a civil court ought not to apply the rigorous tests sometimes applied in questioning the

<sup>1</sup> Accordingly, for the protection of members themselves, the Rules of Procedure require that the convening order shall be read at the commencement of the proceedings and that the court shall ascertain that it is properly constituted.

<sup>2</sup> See *Comyn v. Sabine*, para. 31, *post*.

<sup>3</sup> *Wall v. Macnamara*, para. 37, *post*.

acts of a civil court of summary jurisdiction. . . A reasonable latitude should be allowed, and mere mistakes of procedure, if actual jurisdiction existed, ought not to receive undue weight."<sup>1</sup> Ch. VIII  
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5. An officer holds his commission at the pleasure of the Sovereign, who can at any time dismiss him without assigning a reason<sup>2</sup>; no contract to the contrary unless sanctioned by statute has any legal effect<sup>3</sup>. So, too, a soldier can be discharged at any time,<sup>4</sup> and in his case the form of his attestation undertaking recognises this rule for it binds him to serve for a definite period if his services are so long required. In practice, of course, the prerogative power to dismiss or discharge is not exercised arbitrarily.

Dismissal or discharge of officer or soldier.

An officer cannot claim as a matter of right to resign his commission whenever he pleases.<sup>5</sup>

An officer or soldier cannot recover pay (or half-pay) alleged to be due to him by action or petition of right against the Sovereign in the civil courts.<sup>6</sup>

### (i) *Writ of Mandamus.*

6. The writ of *mandamus* is a command issuing from the High Court of Justice directing some person or inferior court to do some particular act which is in the nature of a public duty. There must be a specific legal right to have the act performed, and there must be no other equally convenient and effectual remedy available. Mandamus when it issues.

There is no record of an application for a *mandamus* to a court-martial; but the following cases illustrate the principles governing the issue of such a writ.

7. An officer considering himself aggrieved in respect of his emoluments applied for a *mandamus* to the Secretary of State for War, directing him to carry out the terms of the Royal Warrant as to the pay and pensions of officers; it was refused on the ground that neither common law nor statute imposed on the Secretary of State any legal duty in respect of officers and their remuneration.<sup>7</sup> Example.

An officer whose conduct had been investigated by a military court of inquiry, and who had been subsequently placed on half-pay, considered that the Rules of Procedure had not been properly complied with, and that he had not had full opportunity of being present throughout the inquiry. He asked for a *mandamus* directing the Army Council to cause the court to reassemble and hear his case according to law. The application was refused on four grounds:—(1) That the court would not interfere in matters relating to military law, prescribing rules for the guidance of officers; (2) that another equally appropriate remedy was open to the officer under s. 42 of the Army Act; (3) that it was in every case a matter for the discretion of the Council whether to assemble

<sup>1</sup> *Heddon v. Evans*, para. 45, *post*.

<sup>2</sup> *Grant v. Sec. of State for India* [1877], L.R. 2 C.P.D. 445; *re Mansergh*, para. 16, *post*; *re Tufnell*, p. 142, note 1, *post*; *Dunn v. R.* L.R. [1896], 1 Q.B. 116.

<sup>3</sup> *Hales v. R.* [1918] 34 T.L.R. 589.

<sup>4</sup> *Leaman v. R.* L.R. [1920] 3 K.B. 663.

<sup>5</sup> *Hearson v. Churchill*, L.R. [1892], 2 Q.B. 144, and older cases there cited.

<sup>6</sup> *Leaman v. R.*, *supra*: no engagement between the Crown and an officer in respect of services either present, past or future can be enforced by civil action; *Mitchell v. R.*, L.R. [1896], 1 Q.B. 121, *note*.

<sup>7</sup> *R. v. Secretary of State for War*, L.R. [1891], 2 Q.B., 326.

Ch. VIII a court of inquiry or not, and that the court never ordered an authority to exercise its discretion in a particular way; (4) that under the circumstances a *mandamus* would be ineffectual, because the Council could act upon any information which reached them and were not confined to a report from a formal court of inquiry.<sup>1</sup>

(ii) *Writ of Prohibition.*

Prohibition;  
when it  
issues.

8. The writ of prohibition issues out of the High Court of Justice to any inferior court which concerns itself with any matter not within its jurisdiction, or transgresses the bounds prescribed to it by law. It forbids the inferior court to proceed further in the matter, or to exceed the bounds of its jurisdiction; and if want of jurisdiction in the inferior court be once shown, any person aggrieved by the usurpation of jurisdiction is entitled to the writ as a matter of right.

The writ will not be granted for irregularity in the proceedings or wrong decision of the merits; or when it can be of no use, as, for example, after a sentence has been carried into execution.

Examples.

*Grant v. Gould.*

9. Applications for a prohibition to restrain courts-martial have hitherto been few and uniformly unsuccessful. The earliest reported is that of *Grant v. Gould*<sup>2</sup> in which Lord Loughborough affirmed the general principle that courts-martial are subject to the control of the superior courts, and can be prohibited if they exceed their jurisdiction; but that on the other hand mere error in matters within their jurisdiction is no ground for a prohibition. The plaintiff, Serjeant Grant, was tried by court-martial on a charge of having persuaded two drummers of the Guards to desert and enlist in the service of the East India Company. He was convicted and sentenced to be reduced to the ranks, and to receive one thousand lashes. Grant moved for a prohibition to prevent the execution of this sentence on the grounds (i) that he was not a soldier and therefore a court-martial had no jurisdiction to try him, (ii) that evidence was improperly admitted and rejected, (iii) that he was convicted of a crime not properly alleged in the charge, and (iv) that such crime was not an offence under the Mutiny Act. The court agreed that the first ground was material, as it affected the jurisdiction of the court-martial<sup>3</sup>; but after examining the facts they were satisfied that Grant was in fact subject to military law: the other grounds they considered as unsubstantial—at the most, errors in procedure; and accordingly they refused prohibition, leaving the sentence to the King's clemency.

*Poe's case.*

10. The next case<sup>4</sup> illustrates the rule that a prohibition will not be granted when it is too late for it to effect any remedy.

<sup>1</sup> *R. v. Army Council, ex parte Rumsbottom*, L.R. [1917], 2 K.B., 504.

<sup>2</sup> (1792) 2 Bl., H., 60.

<sup>3</sup> In this case the court reviewed the evidence on which the court-martial had acted; but Lawrence, J., when referring to it in *Warden v. Bailey*, 4 Taunt. at p. 77, remarked that whether Grant was or was not a soldier was one of the questions which the court-martial "had before them to try," as if their decision on the point was conclusive. The rule now appears to be that where the jurisdiction of the inferior tribunal depends upon a question of law, or of law and of fact mixed, the High Court will review its decision, but not when it depends upon a question of pure fact as to which there was conflicting evidence.

<sup>4</sup> *Re Poe* (1832) 5 Barn. & Adol., 681: see also *re Clifford & O'Sullivan* L.R. [1921] 2 A.C. 570 (referred to in para. 14 post).

Lieutenant Poe, being a passenger on board ship, was accused of stealing money and clothes from his servant's trunks, which were kept in his (Poe's) cabin. On investigation of the charge by the captain of the ship and other officers on board, Poe was expelled by the officers and passengers from their table and society. He took no measures to vindicate his honour; and being tried for conduct to the prejudice of good order and military discipline, was found guilty, and sentenced to be dismissed the service. The sentence was confirmed by the King and carried into execution. An application on behalf of Poe that a prohibition might issue "to the Judge-Martial and Advocate-General of His Majesty's forces" to restrain the execution of the sentence was refused, Denman, C. J., observing that even supposing the case of *Grant v. Gould* to furnish some argument that a writ of this nature might be directed to the Judge-Advocate before execution of the sentence, it was impossible to discover what he could be required to abstain from after execution. Ch. VIII

11. Serjeant M'Carthy<sup>1</sup> was tried in 1866 by a general court-martial on a charge of "coming to the knowledge of an intended mutiny, and not revealing such knowledge to his superior officers." The evidence given implicated him in the Fenian conspiracy, and showed endeavours on his part to induce soldiers to become members of that conspiracy, and various other acts amounting to overt acts of treason. After the close of the prosecution the court-martial was adjourned in order to permit the prisoner to apply for a writ of prohibition on the ground that the evidence establishing the military offence of mutiny disclosed also that the prisoner was guilty of treason, which a court-martial would have no jurisdiction to try. The Irish Court of Queen's Bench held that the military offence did not merge in the greater offence, and declined to accede to the application. *M'Carthy's case.*

12. In 1917 some members of the South African Native Labour Contingent mutinied on the voyage to South Africa, to which country they were being repatriated in accordance with the conditions of their enlistment-contract after the termination of their service in France. After their arraignment before a field general court-martial at Cape Town, the Supreme Court of South Africa was asked to prohibit the president of the court from proceeding further with the case on the ground that the accused were amenable only to a civil tribunal. The court considered the terms of enlistment, and held that recruits to the contingent submitted themselves to military discipline knowing that they were joining a military organisation to be officered by regular officers under War Office orders: they held that s. 176 (3) (9) (10) applied and rendered the accused subject to the Army Act and military tribunals, and consequently refused prohibition. *S.A. Labour Corps case.*

13. Although no writ of prohibition has ever actually been issued to a court-martial, there seems no doubt that it might issue in a proper case; as, for example, if a court-martial were proceeding to try a person not subject to military law. No example of issue of prohibition to a court-martial.

<sup>1</sup> *Re M'Carthy* (1866) 14 W.R., 918.

<sup>2</sup> *Mahabadi v. Gutschke* [1917] S.A. Supreme Court Reports 632. Incidentally the court said that the respondent ought strictly to have been the G.O.C.-in-C. and not the president.

To officer.

The question whether a writ of prohibition would issue to an officer exercising individual authority does not seem ever to have been raised.

To court of inquiry.

In a recent case<sup>1</sup> it was said that, "In a matter affecting the discipline of the Army this Court cannot interfere by *mandamus*, prohibition or *certiorari*, at the suit of an officer or soldier, with the proceedings of a military court of inquiry or with any action that may thereupon be taken by the Army Council."

*Re Clifford and O'Sullivan.*

14. On May 3rd, 1921, Patrick Clifford and Michael O'Sullivan, civilians, were tried by a military court held under a martial law proclamation applicable to County Cork and were convicted and sentenced to death for an offence committed in the martial law area and made capital under the proclamation.

They thereupon applied in the Chancery Division in Ireland for a writ of prohibition against the military court, the Commander-in-Chief in Ireland and the General Officer Commanding in Cork to prohibit them from proceeding further with the trial or from pronouncing or confirming any judgment upon the prisoners as a result of the trial or from carrying into execution any such judgment on the ground that the military court was illegal and had no jurisdiction. Powell, J., following the decision in *R. v. Allen*,<sup>2</sup> refused the application. An appeal was brought to the Court of Appeal in Ireland who held that they had no jurisdiction to entertain the appeal and dismissed it. A further appeal was then taken to the House of Lords and it was there held that, as proceedings before a military court were not in any sense criminal proceedings, an appeal would lie; but, on the merits of the application itself, it was decided that prohibition did not lie, first, because the officers constituting the military court did not claim to act as a judicial tribunal in any legal sense, and, secondly, following the decision in *R. v. Poe*, that they were *functi officio*. In the course of his judgment Viscount Cave, L.C., said: "A further difficulty is caused to the appellants (the original applicants) by the fact that the officers constituting the so-called military court have long since completed their investigation and reported to the commanding officer, so that nothing remains to be done by them and a writ of prohibition directed to them would be of no avail. What the appellants really desire is an order restraining General Macready and Major-General Strickland from confirming and carrying out the sentence; and it is clear that as against these officers, who are in no sense the officers or agents of the military court, prohibition could not be granted."<sup>3</sup>

### (iii) *Writ of Certiorari.*

*Certiorari* when it issues.

15. *Certiorari* is a writ issuing to the judges or officers of inferior courts, and commanding them to certify and return the record of a matter, e.g., a conviction or order, depending before them, to the end that more sure and speedy justice may be done. If the conviction or order of the inferior court is found to be bad in law, it will be quashed.

<sup>1</sup> *R. v. Army Council, ex parte Ravenscroft*, L.R. [1917], 2 K.B., 504.

<sup>2</sup> See para. 29, post.

<sup>3</sup> *Re Clifford and O'Sullivan*, L.R. [1921], 2 A.C. 570.

In the case of inferior civil courts, if absence or excess of jurisdiction is shown, the writ is issued on the application of the person aggrieved almost as a matter of course, unless he has by his conduct precluded himself from taking an objection.<sup>1</sup> As the law is at present understood, in the case of a court-martial sentence, it will issue only when the rights affected by the judgment of the court are civil rights, and not when they are dependent on military status and military regulations.<sup>2</sup>

Ch. VIII

16. In January, 1858, Captain Mansergh was on duty with his regiment, the 6th Foot, at Calcutta, under the command of Colonel Barnes. In February, 1858, he was gazetted to a majority in the 15th Foot, at that time stationed in England. Notice of this appointment was transmitted to India and notified in orders in the usual way, after which notification Major Mansergh ceased, according to the rules of the army, to belong to the 6th Foot. The latter regiment was about to start on active service, when Colonel Barnes informed Major Mansergh of his promotion and desired him to hand over his company to another officer, which he did accordingly.

Examples.  
Mansergh's case.

Subsequently Major Mansergh, conceiving that the notification of his appointment to the 15th Foot had been obtained by Colonel Barnes for the purpose of excluding him from active service, wrote to the Colonel expressing that view in strong language. For this he was placed under arrest, and subsequently tried by court-martial on a charge of having addressed to his superior officer a letter containing offensive and insulting language. He was found guilty and sentenced to be dismissed; and the proceedings having been confirmed, were sent to England and deposited with the Judge-Advocate-General. Major Mansergh then applied to the Court of Queen's Bench for a rule calling on the Judge-Advocate-General to show cause why *certiorari* should not issue to bring up the record of his conviction in order that it might be quashed, on the ground that after his promotion he ceased to be within the command of the Commander-in-Chief in India, and that consequently the court-martial had no jurisdiction to try him.

The Court refused the application<sup>3</sup>—Cockburn, C. J., observing, "I quite agree that when the civil rights of a person in military service are affected by the judgment of a military tribunal in pronouncing which the tribunal has either acted without jurisdiction or has exceeded its jurisdiction, this court ought to interfere to protect these civil rights, *e.g.*, where the rights of life, liberty, or property are involved, although I do not know whether the latter case could occur. Here, however, there was nothing of the sort, the only matter involved was the military status of the applicant—a thing which depends entirely on the Crown, seeing that every person who enters into military service engages to be entirely at the will and pleasure of the Sovereign.<sup>4</sup> Then there is this additional fact that these proceedings originated abroad in a country the tribunals of which are not subjected to our jurisdiction. It is contended that because we have the

<sup>1</sup> *R. v. Surrey* j. [1870] L.R., 5 Q.B., 466.

<sup>2</sup> See paras. 3 *ante* and 16, 17, *infra*.

<sup>3</sup> *Re Mansergh* (1858) 1 Best and Smith, 400.

<sup>4</sup> See para. 5, *ante*.

Ch. VIII — record of the proceedings in the country we have jurisdiction over it. Assuming that for a moment, yet when we look at the particular nature of the case before us, we see that the military status of the applicant alone is affected, and consequently if he had just cause of exception to the act of the tribunal by which he was sentenced, he might have appealed to the Queen to reconsider the matter with the advice of her Judge-Advocate. For these reasons I am of opinion that in this case we have no jurisdiction to grant a *certiorari*; besides which, *certiorari* being a discretionary writ, we most certainly ought not in the exercise of our discretion to grant it if we had the jurisdiction."

Roberts' case.

17. A similar application in 1879 by Captain Roberts was equally unsuccessful. He founded his application on the ground that the sentence of the court-martial dismissing him from the service was invalid, in that it simply sentenced him to be dismissed without stating the cause of dismissal.

It was attempted to distinguish this case from that of *Mansergh*, on the ground that here civil rights were indirectly affected, as Mr. Roberts would lose his rights to pension or retiring allowance, and would lose the sum he had paid for purchase. But it was pointed out by the Judges that the rights referred to were purely military in their nature and dependent on military status and military regulations, and *Mansergh's case* was considered decisive against granting the application.<sup>1</sup>

Fogin's case.

18. In a recent Canadian case<sup>2</sup> it was recognised that, where a court-martial has acted within its jurisdiction, neither the merits of the conviction nor the propriety of the sentence can be reviewed by the Supreme Court upon an application for either *certiorari* or *habeas corpus*.

#### (iv) Writ of Habeas Corpus.

Habeas Corpus: when it issues.

19. Any person who is detained in what he conceives to be illegal custody by order of a court-martial or other military authority can apply for a writ of *habeas corpus ad subjiciendum*. This writ is the most celebrated writ in English law, being the constitutional remedy for a person wrongfully deprived of his liberty. It is addressed to the person who detains another in custody, and commands him to produce and "have the body" of the prisoner before the court to "undergo and receive" whatever the court considers proper. It issues out of the High Court of Justice, and into all parts of the King's dominions, except that by 25 & 26 Vict. c. 20 no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where His Majesty has a lawfully established court of justice having authority to issue this writ and to ensure its due execution. The person to whom it is addressed must make a "return" to the writ stating why he holds the prisoner in custody;

<sup>1</sup> *Re Roberts*, "Times," June 11, 1879. In *Re Tufnell* (1876) L.R., 3 Ch. Div., 164, a petition of right was presented by an army surgeon, who had been compulsorily retired on half-pay, for the injury thereby sustained by him. A demurrer by the Attorney-General to the petition was allowed, the Vice-Chancellor stating the law to be that "every officer in the Army is subject to the will of the Crown and can be removed and put on half-pay, or dealt with as the Crown, with a view to the public convenience, thinks best."

<sup>2</sup> *Ex parte Fogin* (1920) Can. Crim. Cases, Vol. 32, p. 41: see also *K. v. Murphy* (1921) 2 L.R. 190 (referred to in para. 28 post).



and upon consideration of such return the prisoner is either discharged, or, if the return shows sufficient cause for the detention in custody, is remanded to custody, or is admitted to bail. Ch. VIII  
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20. The court upon *habeas corpus* proceedings do not retry the case, for they do not sit as a Court of Appeal to consider whether an inferior court has decided rightly or wrongly upon some point, the decision of which has been entrusted to them.<sup>1</sup> Broadly speaking the question is whether the document under which the custodian justifies his act is a valid one.<sup>2</sup> In illustration of this the case of Gunner Suddis<sup>3</sup> may be referred to. He was sentenced at Gibraltar by a general court-martial to fourteen years' transportation for having received articles stolen from a warehouse. A writ of *habeas corpus* was directed to the Governor of Portsmouth Prison to bring him up from custody. It was held a sufficient return to the writ that the defendant was in custody under the sentence of a court of competent jurisdiction to inquire into the offence and to pass such a sentence, without setting forth the particular circumstances to warrant the sentence. Lord Kenyon, C. J., said, "We are not now sitting as a Court of Error to review the regularity of these proceedings; nor are we to hunt after possible objections." And Grose, J., said, "It is enough that we find such a sentence pronounced by a court of competent jurisdiction to inquire into the offence, and with the power to inflict such a sentence; as to the rest we must presume *omnia rite acta*." No retrial.  
  
Suddis' case.

21. Neither will the court give effect to technical objections to the form of a commitment warrant. It will go behind the commitment and see whether there is a valid conviction<sup>4</sup>; if so, a flaw in the commitment is immaterial; and the Army Act<sup>5</sup> contains an express provision which practically precludes a prisoner from obtaining his release by *habeas corpus* on the ground of errors and informalities so long as there is a valid conviction and sentence against him. Nor again will effect be given to technical errors in the return itself, which can be amended so as to show the real facts. At the present date, therefore, such decisions as those in *Douglas' case*<sup>6</sup> and *Allen's case*<sup>7</sup> are no longer of importance. Technical objections disregarded.

22. Where, however, the proceedings of a court-martial were confirmed by an officer who had not the necessary authority to do so, the prisoner was discharged from custody<sup>8</sup>; and the same result would no doubt follow if it were shown that unqualified officers sat on a court-martial. Re Porrett.

<sup>1</sup> See *ex parte Fagan*, para. 18, ante.

<sup>2</sup> See *R. v. Chiswick (Police Superintendent)* L.R. [1918], 1 K.B. 578, as to the court's power to go behind an order of the executive, which upon its face is valid, if it is found to be "practically a sham" intended to cover an illegality.

<sup>3</sup> (1801) 1 East, 306.

<sup>4</sup> *R. v. Lewis Prison (Governor)* L.R., [1917] 2 K.B. 254.

<sup>5</sup> A.A. 173 (2) (4).

<sup>6</sup> (1842) L.R., 3 Q.B. 825. ~ Douglas was released because the return stated merely that he was detained as a deserter and did not allege that he was a soldier and ought to be with his corps.

<sup>7</sup> (1860) 30 L.J.Q.B. 38. Lieut. Allen was sentenced in India to four years' imprisonment. After confirmation he was removed in military custody to England, and was imprisoned in several gaols. No proper written authority for his imprisonment after arrival had been sent to England, and the court felt compelled to release him. He actually recovered £50 damages from the governor of one of the prisons. (*Allen v. Boyle*, "Times," March 4, 1861.)

<sup>8</sup> *Re Porrett* (1844) *Ferry's Oriental Cases* 414.

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*Re Moore.*

23. In a Canadian case,<sup>1</sup> a storekeeper who had been convicted by court-martial on a charge of "embezzling or fraudulently misapplying," and imprisoned, obtained his release by *habeas corpus* from the Court of Queen's Bench at Montreal. The court adjudged the commitment to be void by reason of the form of charge and finding, and ordered the prisoner to be discharged, "because the charge and conviction were in the alternative without any certainty as to any or either of the two charges in the disjunctive, and this is matter of substance."

High Court  
will examine  
regularity of  
proceedings  
only.

24. As a general rule the High Court will look to see whether the inferior tribunal had jurisdiction, and whether its proceedings are upon their face regular and according to law; but it will not consider whether that tribunal has correctly decided some question of law or of fact which it was its duty to decide<sup>2</sup>—unless perhaps there was before it no evidence at all to support its decision.<sup>3</sup>

*Blake's case.*

25. Proceedings by *habeas corpus* are not, of course, restricted to cases where there has been a conviction. For instance, the writ may issue where a man is detained for an unreasonable time without being brought to trial. Thus in 1814 a writ was asked for on behalf of Lieutenant Blake, to be addressed to the commanding officer of the infantry barracks at Windsor. The affidavit in support stated that Blake, being on leave and hearing that there were certain charges alleged against him, voluntarily surrendered himself to take his trial, that on September 21 he was placed under arrest and in close confinement, and that until the latter end of October he was not permitted to quit his room, but afterwards was allowed to take exercise. On November 1, not having been furnished with any copy of the charges against him, he presented a memorial to the Commander-in-Chief, but did not receive any answer. On November 16 he was officially informed that a warrant had been signed for holding a court-martial, and was furnished with a copy of the charges, which consisted among others of certain offences stated to have been committed at Windsor towards an officer of the same regiment. On November 22nd his regiment was ordered on foreign service, and shortly afterwards sailed for Holland. The affidavit then stated that all or many of the witnesses who might be called for the prosecution or defence had sailed with the regiment, that the laws of this realm would not permit him to be sent to a foreign country for trial, and therefore he could not be brought to trial before the return of the regiment. It further alleged that, as a matter of fact, a sufficient number of officers might at any time have been conveniently assembled for the purpose of constituting a court-martial; and therefore there had been ample opportunity for conveniently assembling one between the arrest and the signing of the warrant, and also between the signing of the warrant and the sailing of the regiment.

The court inquired if there was any instance of a *habeas corpus* to take a military subject out of military arrest, and were referred to the case of Serjeant Wade<sup>4</sup> where a rule *nisi* (i. e., a rule calling

<sup>1</sup> *Re Moore* (1867) Simmons, p. 165.

<sup>2</sup> *R. v. Morn Hill Camp (Commandant)* L.R. [1917], 1 K.B. 176.

<sup>3</sup> *R. v. Brixton Prison (Governor)* L.R. [1914], 1 K.B. 77.

<sup>4</sup> 2 M. & S., 429 n.

on the other side to argue the question and show why the writ should not issue) had been granted. The court hesitated about granting a rule *nisi*, because, upon the question whether a court-martial could be conveniently assembled, if the return should be that a court-martial could not be conveniently assembled, the court would be precluded. A rule *nisi* was, however, granted, and on its coming on to be argued, an affidavit from the Judge-Advocate-General was produced, stating that proceedings were instituted for bringing Blake to trial as soon after his arrest as could conveniently be done; and that he believed Blake would have been tried before, had not the trial been postponed partly on account of the absence in the West Indies of persons alleged by Blake to be material for his defence, and partly on account of the embarkation of the regiment. Thereupon the court refused the writ, Lord Ellenborough, C.J., observing, "Up to November 16 the applicant seems to have thought it a fair time, and the delay since has been satisfactorily explained; it is not a wanton or oppressive delay, but arising out of the circumstances of the country. We cannot lay down any general rule, but must in a very great degree give credence to people in high situations when they depose that all has been done which could conveniently and according to the course of office be done, and unless something be shown to the contrary."<sup>1</sup>

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26. Where a writ of *habeas corpus* was issued to an officer to produce a recruit who was detained as a deserter, and the officer by direction of the Horse Guards discharged the prisoner, and made no return, the court were of opinion that he ought to have returned the fact of the discharge, but would not grant an attachment for contempt.<sup>2</sup>

27. A prisoner of war (including an alien internee) cannot sue out a writ of *habeas corpus*.<sup>3</sup>

*Re Gavin.*  
No *habeas corpus* for prisoner of war.

28. The Irish troubles of 1920-21 gave rise to a series of cases in which the jurisdiction both of statutory courts-martial and of military courts held under martial law was challenged in the superior courts of law.

Cases arising out of recent Irish troubles.

On December 15th, 1920, Joseph Murphy, a civilian subject to military law by virtue of the special provisions of the Defence of the Realm Consolidation Act, 1914, and the Restoration of Order in Ireland Act, 1920, was tried and convicted by general court-martial of the murder of a soldier on duty and was sentenced to death. Before the sentence was executed, application was made to the Court of King's Bench in Ireland for a writ of *habeas corpus* directed to the governor of the prison in which the condemned man was interned and for a writ of *certiorari* directed to the General Officer Commanding-in-Chief in Ireland, and to the Major-General who had convened the court-martial, to bring up the record, findings, &c., of the court in order that they might be quashed on the ground that there had been an abuse of the jurisdiction of the court and a disregard of the essentials of justice and the conditions regulating the functions and duty of the court.

*Joseph Murphy's case.*

<sup>1</sup> *Ex parte Blake* (1814) 2 M. & S. 428.

<sup>2</sup> *Re Gavin* (1850) 15 Jur., 329 n.

<sup>3</sup> *Schiffman v. Goldberg*, L.R. [1916], 1 K.B. 284.

Ch. VIII It was alleged and not disputed that admissible evidence had been wrongly excluded by the court-martial.

The Court of King's Bench held that the court-martial in the exercise of the jurisdiction which it possessed was called upon to decide questions, not only of fact, but of law, including the admissibility of evidence; that its jurisdiction was not ousted because it happened to give an erroneous decision; and that a court-martial cannot be deemed to exceed or abuse its jurisdiction merely because it misconstrues a statute or admits illegal evidence or rejects legal evidence. The applications for writs of *habeas corpus* and *certiorari* were therefore refused and the court further held that the reasons upon which the decision was based would be applicable also to a writ of prohibition.<sup>1</sup>

John Allen's case.

29. On February 7th, 1921, John Allen, a civilian, was tried by a military court convened in accordance with a proclamation of martial law, and was sentenced to death for an offence which was made a capital offence under the proclamation though not punishable capitally under the ordinary law. Application was therefore made for a writ of prohibition directed to the General Officer Commanding-in-Chief in Ireland, for a writ of *habeas corpus* directed to the governor of the military detention camp where the condemned man was interned and for a writ of *certiorari* to quash the proceedings on the ground that they were illegal and in excess of jurisdiction and that the military courts had no authority to sentence Allen to death for the offence for which he was tried.

The Court of King's Bench in Ireland decided that there was a state of war existing which justified the application of martial law; that a government is bound when dealing with an armed insurrection to repel force by force and to put down such insurrection and restore public order, even if this involves a death sentence for an offence otherwise not punishable capitally; that while the state of war exists the superior courts have no jurisdiction to question the acts of the military authorities when martial law is imposed and the necessity for it exists; and that a military court under martial law can in some circumstances (following *ex parte Marais*<sup>2</sup>) act even if courts of justice in the martial law area are open. For these reasons the applications for the various writs mentioned were refused.<sup>3</sup>

Garde and Romayne's cases.

The case of *R. v. Allen* was followed in two similar cases which came before the Court of King's Bench in Ireland; in both cases it was held that if a state of war is shown to exist in an area placed by proclamation under martial law, the civil courts have no jurisdiction *durante bello* to interfere with the decision of a military court sitting in the martial law area.<sup>4</sup>

Egan v. Macready.

On July 26th, 1921, the Master of the Rolls sitting in the Chancery Division in Ireland declined to follow the decision of the Court of King's Bench in *R. v. Allen* holding that as a state of war was in existence at the date of the passing of the Restoration of Order in Ireland Act, 1920, the executive powers of the

<sup>1</sup> *R. v. Murphy* [1921] 2 I.R. 190.

<sup>2</sup> L.R. [1902], A.C. 109.

<sup>3</sup> *R. v. John Allen* [1921] 2 I.R. 241.

<sup>4</sup> *R. (Garde) v. Strickland* (1921) 2 I.R. 317; *R. (Romayne and Mulcahy) v. Strickland* (1921) 2 I.R. 333.

military authorities were limited by that Act and that accordingly the accused could be tried by no other military tribunal than a court-martial properly convened and held in accordance with the statute. A conditional order for a writ of *habeas corpus* was made absolute and in accordance with the practice of the court made returnable for July 29th, but on that day the Crown did not produce the prisoner in view of the decision of the House of Lords in the case of *Clifford and O'Sullivan*<sup>1</sup> on July 28th, but subsequently released him pending the hearing of an appeal from the decision of the Master of the Rolls. No appeal was in fact made.<sup>2</sup>

Ch. VIII

(v) *Actions for Damages.*

30. It is a general rule of law that magistrates and others, who, acting without jurisdiction, or in excess of their jurisdiction, violate the personal rights of any person by causing his arrest, imprisonment, or otherwise, are liable to an action for damages.<sup>3</sup> It is now recognised<sup>4</sup> that the same general rule applies to officers where a person's common law rights are infringed. Members of a court-martial who try a person not subject to military law, or for an act which is not an offence cognisable by them, or who pass a sentence which they have no power to pass, and the officer who confirms the proceedings, are all liable to an action at the suit of the person so aggrieved: so, too, are individual officers who transgress the bounds of their lawful authority.

Actions against members of courts-martial and individual officers.

For mere errors of judgment in deciding points upon which it is their duty to adjudicate, members of a court-martial cannot be made responsible any more than civil judges and magistrates. "Even inferior justices and those not of record cannot be called in question for an error of judgment so long as they act within the bounds of their jurisdiction. In the imperfection of human nature it is better even that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it. Corruption is quite another matter, so also are neglect of duty and misconduct in it. For these, I trust, there is, and always will be, some due course of punishment by public prosecution<sup>5</sup>." The same rule doubtless applies to individual officers exercising judicial functions.<sup>6</sup>

No liability for mere errors of judgment.

On the other hand, if an act is in itself unlawful—as being done without, or in excess of, jurisdiction—*bona fides* and honesty of purpose are no excuse.

31. The plaintiff in *Comyn v. Sabine*<sup>7</sup> was a master carpenter of the office of ordnance at Gibraltar, and he brought an action against Governor-General Sabine for having confirmed the sentence of a court-martial which awarded him the punishment of 500 lashes. It was shown that the carpenters of the office of ordnance were not subject to military law, and the jury found the

Actions by civilians: *Comyn v. Sabine*.

<sup>1</sup> See para. 14, *ante*.

<sup>2</sup> *Egan v. Macready* (1921) 1 I.R. 285.

<sup>3</sup> *Crepps v. Durdan* [1777], 1 Smith, Lead. Ca., 651.

<sup>4</sup> See para. 3, *ante*.

<sup>5</sup> *Garnett v. Ferrand* (1827) 2 Barn. & Cr. 611: *per* Lord Tenterden, C.J.

<sup>6</sup> *Heddon v. Evans*, para. 45, *post*.

<sup>7</sup> (1738) cited in *Moslyn v. Fabriga*, para. 32, *infra*.

Ch. VIII Governor to be liable, as having had a share in the sentence, and gave 500*l.* damages. Lord Mansfield, citing the case in *Mostyn v. Fabrigas*<sup>1</sup> said, "The Governor was very ably defended, but nobody thought the action would not lie."

And, where a conviction is invalid, the governor of a prison who detains the person may be liable to an action.<sup>2</sup>

*Sutherland v. Murray.*

*Sutherland v. Murray*<sup>3</sup> was an action brought by Mr. Sutherland, a judge in Minorca, against General Murray for improperly suspending him from his office. The General had professed himself ready to restore the judge on his making a particular apology; and on reference to the home authorities the King approved of the suspension unless the Governor's terms were complied with. It was admitted that General Murray had power to suspend the judge for proper cause, yet on the proof that he had acted unreasonably and maliciously, and had misrepresented the facts in his report, the jury gave 5,000*l.* damages against him.

*Goodes v. Wheatly.*

In *Goodes v. Lieutenant-Colonel Wheatly*,<sup>4</sup> the plaintiff was doing duty as constable at St. James's Palace, and had occasion to desire Lieutenant-Colonel Wheatly, of the Guards, who was not in uniform, to walk on, whereupon Colonel Wheatly marched Goodes off to the guard-room by a file of grenadiers, and confined him there several hours. The plaintiff was non-suited, but, it would appear, solely in consequence of a failure to prove formally his appointment as constable.

*Boyes v. Bayliffe.*

In another case the captain of an East Indiaman, on two strange sails being descried, mustered all hands and passengers, and assigned them stations for the defence of the ship. The plaintiff, one of the passengers, refused to go to his station, and was thereupon, by order of the captain, carried there and kept in irons all night. It was held by Lord Ellenborough that though the captain might well have been justified originally in confining the plaintiff for his refusal to obey orders, yet he had exceeded his authority in keeping him in irons all night; and the jury gave 80*l.* damages.<sup>5</sup>

*Glynn v. Houston.*

In *Glynn v. Houston*,<sup>6</sup> Mr. Glynn, a British merchant residing at Gibraltar, recovered 50*l.* damages from General Sir William Houston, the acting governor, for having caused Mr. Glynn's premises to be surrounded with a detachment of troops, while a house immediately adjoining was searched for the person of a Spanish general, and for having prevented Mr. Glynn from leaving his house during the search (which was unsuccessful) by placing a sentinel with fixed bayonet at the door.

Actions by foreigners: *Mostyn v. Fabrigas.*

32. Foreigners will be protected by our courts in the same way as Englishmen. Thus, in the well-known case of *Mostyn v. Fabrigas*,<sup>7</sup> a native of Minorca brought an action against General Mostyn, governor of that island, for having, without trial, imprisoned and banished him from the island, and recovered 3,000*l.* damages. On a bill of exceptions, the point that, where

<sup>1</sup> See para. 32, *infra*.

<sup>2</sup> See *Allen v. Boyle* p. 143, note 7, *ante*.

<sup>3</sup> See (1783) 1 T.R. 538.

<sup>4</sup> (1808) 1 Campbell 231.

<sup>5</sup> *Boyes v. Bayliffe* (1807) 1 Campbell 58.

<sup>6</sup> (1841) 2 Man. & Gr. 337.

<sup>7</sup> (1774) 1 Smith, Lead. Ca., 591.

the cause of action arises abroad, the courts of this country have no jurisdiction, was elaborately argued; but Lord Mansfield, delivering the judgment of the court, emphatically laid down that actions of this description may be brought in England, though the matter arises in foreign parts. He also, with no less emphasis, rejected the argument that the defendant was entitled to protection from an action by reason of his character as governor. In the course of the case he referred to two earlier decisions of a somewhat similar character. In the first of these it appeared that Captain Gambier, by order of Admiral Boscawen, pulled down the houses of some sutlers on the coast of Nova Scotia, who supplied the sailors frequenting them with spirituous liquors, whereby their health was injured. One of the sutlers (whom the captain incautiously conveyed to England upon his ship) brought an action against him and recovered 1,000*l.* damages. The second case, in which Admiral Palliser was sued for destroying some fishing huts erected by Canadians on the Labrador coast, was disposed of by an arbitrator's award.

So, too, in a later case it was held that an English naval officer was liable in damages to a Spaniard for seizing his cargo of slaves on board a Spanish ship.<sup>1</sup> *Madrazo v. Willis.*

33. A British subject, however, is not liable to actions by foreigners in respect of hostile acts done by him in the name of the Government, provided those acts are either authorised by an actual command or ratified by a subsequent approval of the Government. To such acts the maxim *respondet superior* appears to apply; and, if the Government refuses redress, there is no remedy but an appeal to arms.<sup>2</sup> Nor, where war is actually raging, are acts of the military authorities cognisable by the ordinary courts.<sup>3</sup>

Further, in time of war, an alien enemy cannot sue in our courts unless he is within the realm by licence of the Sovereign.<sup>4</sup> *Alien enemies.*

34. There are several old cases where juries gave heavy damages in respect of the unauthorised infliction of corporal punishment. Thus a seaman recovered damages against Captain Tonym, R.N., for the infliction of several dozen lashes without a court-martial, the custom of the Navy only permitting a commanding officer to inflict summarily one dozen lashes.<sup>5</sup> *Excessive corporal punishment; damages for.*

A similar action was brought against Colonel Bailey, of the Middlesex Militia, for improperly flogging a private, and 600*l.* damages were awarded. And in an action tried in 1793 against officers of the Devon Militia for inflicting 1,000 lashes on the plaintiff, who had been found guilty of a charge of mutiny, though the only act proved against him was that he had written to the colonel a letter telling him that the men were discontented, which was not communicated to anyone else, the plaintiff recovered 500*l.* or 600*l.* damages.<sup>6</sup>

<sup>1</sup> *Madrazo v. Willis* (1820) 3 Barn. & Ald. 353, slavery being then lawful by Spanish law; but as to an English slave owner's rights, see *Forbes v. Cochran* (1824) 2 Barn. & Cr. 448.

<sup>2</sup> See cases cited in 1 Smith, Lead. Ca., 648.

<sup>3</sup> *Ex parte Marais* L.R. [1902], A.C. 109.

<sup>4</sup> *Porter v. Freudenberg*, L.R. [1915], 1 K.B. 857.

<sup>5</sup> 4 Taunt., 71.

<sup>6</sup> (1793) 4 Taunt., 70.

Illegal  
sentence :  
damages  
for.

*Frye v. Ogle.*

35. A well-known case as to the liability of members of a court-martial is *Frye v. Ogle*. Lieutenant Frye was brought to a court-martial at Port Royal by his captain for disobedience in refusing to assist another lieutenant in carrying an officer prisoner on board ship without a written order from the captain. Part of the evidence produced against him at the court-martial consisted of depositions made by illiterate natives, whom he had never seen or heard of, and reduced into writing several days before he was brought to trial; and upon his objecting to the evidence he was brow-beaten and overruled. Lieutenant Frye was sentenced to 15 years' imprisonment, and declared for ever incapable of serving His Majesty. It is doubtful whether the act charged against him amounted to an offence<sup>1</sup>; but in any case the court had only power to award two years' imprisonment. On his arrival in England, his case was laid before the Privy Council and the punishment remitted by His Majesty.

Some time afterwards he brought an action in the Court of Common Pleas against Sir Chaloner Ogle, the president of the court-martial, and obtained a verdict in his favour for 1,000*l.* damages.<sup>2</sup>

*Barwis v*  
*Keppel.*

36. In *Barwis v. Keppel*,<sup>3</sup> the plaintiff, a discharged serjeant of the Guards, obtained a verdict with 70*l.* damages against Major Keppel, as acting commander of his regiment, for maliciously and without any reasonable cause reducing him to the rank of private for neglect of duty during active service abroad. After an argument as to the powers of a commanding officer under the Articles of War, the court intimated their view that the verdict could not stand, saying:—"By the Act of Parliament to punish mutiny and desertion the King's power to make Articles of War is confined to his own dominions; when his army is out of his dominions, he acts by virtue of his prerogative and without the statute or Articles of War; and therefore you cannot argue upon either of them, for they are both to be laid out of this case, and *flagrante bello* the common law has never interfered with the army; *inter arma silent leges*." At this date an army abroad in time of war was governed by "prerogative" Articles.<sup>4</sup> Apparently the court considered that as between soldiers, grievances arising out of disciplinary action in time of war could only be entertained by military tribunals or authorities.

Abuse of  
powers.  
*Wall v.*  
*Mac-*  
*namara*

37. In *Wall v. Macnamara*,<sup>5</sup> the plaintiff, a captain in the African Corps, brought an action against the Lieutenant-Governor of Senegambia for imprisoning him for nine months at Gambia. The defence was a justification of the imprisonment under the Mutiny Act for disobedience of orders. At the trial it appeared that the imprisonment of Captain Wall, which was at first legal—namely, for leaving his post without leave from his commanding officer, though in a bad state of health—had been aggravated with many circumstances of cruelty. Lord Mansfield, in sum-

<sup>1</sup> Lawrence, J., in *Warden v. Bailey*, *infra*, thought that it did not, and that Frye's arrest was therefore illegal at the outset.

<sup>2</sup> (1743) *McArthur on Courts-Martial*, vol. i, p. 406.

<sup>3</sup> (1766) 2 *Wilson's Rep.* 314.

<sup>4</sup> See Chap. II, para. 28.

<sup>5</sup> (1779) 1 *T.R.*, 536. The plaintiff in this case was hanged 20 years later for a "judicial murder" in Africa: see para. 54, *post*.



ming up, said, "In trying the legality of acts done by military officers in the execution of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright. . . . Thus the principal inquiry to be made by a court of justice is, *how the heart stood*; and if there appears to be nothing wrong there great latitude will be allowed for misapprehension or mistake. But, on the other hand, if the heart is wrong, if cruelty, malice, and oppression appear to have occasioned or aggravated the imprisonment or other injury complained of, they shall not cover themselves with the thin veil of legal forms, nor escape under cover of a justification, the most technically regular, from that punishment which it is your province and your duty to inflict on so scandalous an abuse of public trust. It is admitted that the plaintiff was to blame in leaving his post, but there was no enemy, no mutiny, no danger, his health was declining, and he trusted to the benevolence of the defendant to consider the circumstances under which he acted. But supposing it to have been the defendant's duty to call him to a military account for his misconduct, what apology is there for denying him the use of the common air, in a sultry climate, and shutting him up in a gloomy prison, where there was no possibility of bringing him to trial for several months, there not being a sufficient number of officers to form a court-martial? These circumstances, independent of the direct evidence of malice, as sworn to by one of the witnesses, are sufficient for you to presume a bad, malignant motive in the defendant, which would destroy his justification, had it even been within the powers delegated to the defendant by the commission." The jury found a verdict for Captain Wall, with 1,000*l.* damages.

This case suggests<sup>1</sup> that if military authority is exercised within legal limits, but yet with excessive severity or cruelty, the abuse of the jurisdiction may amount to "excess" of jurisdiction.

38. In *Grant v. Shard*<sup>2</sup> violent language and striking a subordinate officer on duty were held actionable. Grant was directed to give a military order, and it appeared that he sent two persons who failed. Shard thereupon said to Grant, "What a stupid person you are," and twice struck him. Although the circumstances occurred in the actual execution of military service, it was held that the action was maintainable, and a verdict was found for the plaintiff, with 20*l.* damages. An application was afterwards made to the Court of King's Bench to set aside the verdict, but the court, after argument, refused to disturb it, though Lord Mansfield was desirous to grant a new trial.

39. Captain Molloy, of H.M.S. "Trident", kept his purser, Swinton, in confinement for three days without inquiring into the charge against him, and then, on hearing his defence, released him. The purser brought an action against Captain Molloy, and on the evidence Lord Mansfield said that such conduct on the

Assault,  
*Grant v.*  
*Shard.*

Illegal  
confinement.  
*Swinton v.*  
*Molloy.*

<sup>1</sup> But see para. 4, *ante*, and 40, *post*.

<sup>2</sup> (1784) 4 Tount., 86.

**Ch. VIII** — part of the captain did not appear to have been a proper discharge of his duty, and, therefore, that his justification under the discipline of the Navy had failed him. It does not appear what the verdict was.<sup>1</sup>

Malicious  
prosecution.  
*Sutton v.*  
*Johnstone.*

40. We now come to the famous case of *Sutton v. Johnstone*, already referred to as the origin of the doctrine that as between soldiers grievances arising out of military discipline will not be remedied by the civil courts.<sup>2</sup> The plaintiff was captain of H.M.S. "Isis," which formed part of a squadron under the command of the defendant. On the 16th April, 1781, Johnstone ordered the squadron to pursue the French fleet, and signalled to Sutton to slip his cable in order to engage the enemy. Sutton having failed to slip his cable, Johnstone caused him to be brought to a court-martial on the ground of having "delayed and discouraged the public service on which he was ordered," and for disobedience of orders in not slipping his cable and putting to sea. The court-martial found that Sutton was justified in not immediately slipping his cable owing to the state in which his ship was, and that he did not delay the public service, and adjudged him to be honourably acquitted. Upon this he brought an action against Johnstone for having maliciously and without probable cause charged him with the crime of disobedience of orders and the delay of the public service.

The case was twice tried and the plaintiff recovered 5,000*l.* damages on the first trial and 6,000*l.* on the second. A motion was then made in arrest of judgment, and upon this two points were raised; first, whether the action would lie; secondly, whether, if it did lie, the plaintiff was entitled to keep his verdict. On the first point it was urged for the defendant that an inferior officer cannot maintain an action against his superior for acts "done in the course of discipline and under powers incident to his situation." The court held that an action would lie: with certain exceptions, as in the cases of judges and jurymen, "all men hold their situations in this country upon the terms of submitting to have their conduct examined and measured by that standard which the law has established." *Wall v. Macnamara* and *Mostyn v. Fabrigas* were quoted as authorities for this, and the court had clearly no doubt: "If it be meant that a commander-in-chief has a privilege to bring a subordinate officer to a court-martial for an offence he knows him to be innocent of under colour of his powers, or of the duty of his situation to bring forward inquiries into the conduct of his officers, the proposition is too monstrous to be debated." On the second point also (absence of probable cause) the court were in favour of the plaintiff, and directed the verdict to stand.

On a further appeal, the Court of Exchequer Chamber<sup>3</sup> decided that in any case the defendant had probable cause for his action, and that therefore the plaintiff must fail. They went on, however, to express an opinion on other points not necessary for the decision of the case. First they dealt thus with the duty of a subordinate officer: "He must not judge of the danger, propriety, expediency or consequence of the order which he receives; he must

<sup>1</sup> *Sutton v. Molloy* (1783) 1 T.R., 537.

<sup>2</sup> See para. 3, *ante*.

<sup>3</sup> (1786) 1 T.R., 493, 784.

obey; nothing can excuse him but a physical impossibility".<sup>1</sup> Secondly, they said that the undue delay (if any) in bringing Sutton to trial was "a mere military offence. It is the abuse of a military discretionary power, and the defendant has not been tried for it by court-martial."<sup>2</sup> Lastly (but as to this they felt very doubtful) they thought that even in the absence of probable cause the action would not lie on the ground that if superior officers abused their powers the persons aggrieved had their proper remedy under military law before military tribunals. On a further appeal the House of Lords affirmed this decision,<sup>3</sup> apparently on the ground that Johnstone had in fact reasonable cause for his action: indeed it has been stated<sup>4</sup> that they did not agree with the view that an action could not be sustained even in the absence of probable cause. It may be noted that Lord Mansfield (who was of opinion that Sutton could in no case succeed) was the judge who tried *Wall v. Macnamara* (para. 37, *ante*). It is difficult to see the distinction between cruelty in exercising jurisdiction and malice in exercising it. Possibly the fact that Macnamara acted "in cold blood," but Johnstone in the heat of battle weighed with the court in the later case. Lord Mansfield also tried *Swinton v. Molloy* (para. 39, *ante*), and *More v. Bastard* (*infra*).

41. In 1804, Colonel More appeared as prosecutor at a court-martial, whereof Colonel Bastard was president. Some contradiction between the evidence of two witnesses led the court to conclude that wilful perjury had been committed; and the president ordered Colonel More into arrest, either for having suborned one of the witnesses or for not openly disavowing him. In an action for false imprisonment, Lord Mansfield said that there was no defence; and the jury awarded 300*l.* damages.<sup>5</sup>

42. *Warden v. Bailey* is an important and somewhat complicated case. The plaintiff was a militia serjeant, and his colonel ordered all non-commissioned officers of the regiment (i) to attend an evening school, and (ii) to contribute 8*d.* a week towards the expenses thereof. Both orders were probably unlawful. The plaintiff with others was reprimanded for refusal to obey, and promised to do so in future; but on the same evening indulged in mutinous language upon the subject to other non-commissioned officers. On the following day the defendant, the adjutant, had him arrested and conveyed to gaol; subsequently he was brought up before the colonel, who remanded him in custody for trial by court-martial on a charge of using mutinous language. After acquittal, he sued the defendant for the imprisonment. The defendant was prepared to base his defence on the ground that the arrest was for using mutinous language (*not* for refusal to obey orders), and that he had reasonable ground for believing that such language had been used; but, before he gave any evidence on the

Ch. VIII  
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More v.  
Bastard.

Warden v.  
Bailey.

<sup>1</sup> But, of course, they were considering, at any rate primarily, orders given in actual fighting.

<sup>2</sup> This seems opposed to *Swinton v. Molloy*, para. 39, *ante*.

<sup>3</sup> 1 Bro. P.C., 100.

<sup>4</sup> Per Lawrence, J., at 4 Taunt., 75.

<sup>5</sup> *More v. Bastard* (1804), 4 Taunt., 70; McArthur, vol. ii, p. 195. In an action brought at Calcutta in 1841, a reporter recovered nominal damages against the president of a court-martial for having ordered the forcible seizure of his notes, which he had persisted in taking after being ordered to desist; *Richells v. Walker*, Hough, Mil. Prec. 718.

Ch. VIII point, the judge non-suited the plaintiff on the ground that *Sutton v. Johnstone* had decided that an inferior officer cannot maintain an action against a superior for imprisonment inflicted in consequence of any command whatever issued by the superior, or for anything done under colour of military authority. On appeal, the court ordered a new trial to decide on what ground the plaintiff had really been arrested, and whether the defendant had probable cause for his action. They pointed out that the only point actually decided in *Sutton v. Johnstone* was that the defendant there had probable cause; further, that the imprisonment there was for disobedience in action, where instant obedience is necessary, and that therefore the inference sought to be drawn from the case was a "very wide" one.<sup>1</sup> On the new trial it was held that insubordinate discussion of even an illegal order was a breach of discipline, and that there was probable cause for detaining the defendant in custody for trial by court-martial on a charge of using mutinous language. The action therefore failed.<sup>2</sup> The court in sending the case back for a new trial to ascertain why the plaintiff was arrested appear to have ruled in effect that the soldier's duty of obedience did not require him to obey an obviously illegal order, though by obeying it he would not injure any other person.

Develop-  
ment of  
the *Sutton*  
*v. John-*  
*stone*  
doctrine.

*Dawkins* v.  
*Rokeby*.

*Marks* v  
*Frogley*.

43. The doctrine enunciated in *Sutton v. Johnstone* that the civil courts could not be invoked to redress grievances between persons both subject to military law (who had a prescribed method of obtaining redress for such grievances) was recognised in *re Mansergh and re Roberts* (paras. 16, 17, *ante*), by Lush, J., in *Dawkins v. Paulet*<sup>3</sup> and in *Dawkins v. Rokeby*<sup>3</sup> by ten judges, whose unanimous opinion it was that a case involving questions of military discipline and military duty alone was cognisable only by a military tribunal, and not by a court of law. It was also recognised in *Marks v. Frogley*<sup>4</sup> by the Court of Appeal. In that case it appeared that a Volunteer battalion to which the parties belonged had been in camp with regular soldiers for a week, and during such training they were subject to the Army Act. On the morning of the day on which the battalion was to return home, plaintiff was accused of theft from a comrade; thereupon the adjutant put him under arrest, and later in the day on arrival at their home railway station, ordered the three defendants to march him to the nearest police station and hand him over to the police on a charge of larceny. Having been acquitted, he sued the defendants for false imprisonment, alleging that he and they had ceased to be subject to military law on leaving the camp, and that therefore the Army Act did not justify their obedience to the order given to them. It was held by the Court of Appeal that they were at all material times subject to military law, and that (apart from any defence under the *Sutton v. Johnstone* doctrine) the Army Act justified the acts complained of.

<sup>1</sup> (1811) 4 Taunt., 67.

<sup>2</sup> (1815) 4 M. & S., 400.

<sup>3</sup> As to these cases, see paras. 50, 51, *post*; see also *Keighly v. Bell* (1866), 4 F. & F. 763.

<sup>4</sup> L.R. [1896], 1 Q.B. 306, 338; and again in *R. v. Army Council*, para. 7, *ante*.

44. In *Fraser v. Balfour*,<sup>1</sup> a naval officer who had been compulsorily retired sued the First Lord of the Admiralty alleging (i) false imprisonment (*vis.*, his detention in hospital "under observation for insanity"), and (ii) malice in causing him to be retired. In the courts below it was held that the action was not maintainable in view of the decisions referred to in the preceding paragraph: The House of Lords pointed out that their decision in *Damkins v. Roake* proceeded solely on the question of the privilege of witnesses, and did not affirm the wider proposition laid down in the Exchequer Chamber. They agreed that the claim for false imprisonment was misconceived; but ruled that the claim for maliciously causing the plaintiff's retirement raised a question which was still open to argument in the House of Lords, and that it must be allowed to proceed if the plaintiff put his pleadings in proper order.<sup>2</sup>

Present  
position  
*Fraser v.*  
*Balfour.*

45. In the recent case of *Heddon v. Evans*<sup>3</sup> the cases from *Sutton v. Johnstons* onwards were re-examined, and the Judge came to the conclusion that the doctrine therein approved was not intended to extend to infringements of fundamental common law rights where the defendant had acted without, or in excess of, jurisdiction. Acting upon this view, he laid down two important principles: (1) that an officer is liable in an action for damages if without jurisdiction or in excess of his jurisdiction he commits an act which amounts to false imprisonment or other common law wrong, even though he purports to act in the course of military discipline; but (2) that, if his act is within his jurisdiction and is done in the course of military discipline, no action will lie on the ground only that the act was done maliciously and without reasonable and probable cause. This latter proposition was in the opinion of the Judge open to review in the House of Lords (*see Fraser v. Balfour, supra*), but in no lower tribunal. Incidentally, several minor points of military law were decided, or discussed in the case.

*Heddon v.*  
*Evans*

The plaintiff, a private soldier, was put under arrest and charged before his commanding officer with (i) making a frivolous complaint, and (ii) conduct to the prejudice, &c., in writing a certain letter to the commanding officer. He was convicted of both charges and awarded 14 days' confinement to barracks, in respect of which he claimed damages against the commanding officer for false imprisonment. The Judge ruled that the absence of a charge-sheet (required by s. 45 of the Army Act) did not invalidate the arrest and custody; that, though the first charge was invalid as disclosing no offence, the conviction on the second charge, if valid, would support the sentence: that the letter complained of was in law capable of being construed as a breach of discipline, and that it was open to the commanding officer to find that it did amount to such a breach; that the commanding officer was not bound to give the accused the option of having the case tried by district court-martial because the loss of "corps pay" involved in the sentence of confinement to barracks was not forfeiture of "pay," and because, even if it were, Rule of Procedure 7 would cure

<sup>1</sup> *Fraser v. Balfour* (1918) 34 T.L.R. 502; see also *Fraser v. Hamblin* (1917) 33 T.L.R. 431

<sup>2</sup> The action did not proceed further.

<sup>3</sup> (1919) 35 T.L.R. 642.

Ch. VIII his omission to offer the option. Consequently, he held that the commanding officer had acted within his jurisdiction, and could not be liable, even if confinement to barracks amounted to sufficient deprivation of liberty to support a claim for false imprisonment—a point which he did not decide. At a later date the commanding officer had again placed the plaintiff under arrest on a charge arising out of a letter to the General Officer Commanding, and had remanded him for trial by district court-martial. The plaintiff claimed that the remand to, and confinement in, a detention barrack was illegal and without jurisdiction on the ground that there was no committal warrant, but the Judge held that, though a committal warrant should have been made out and signed, the custody could be justified under s. 45 of the Army Act. The plaintiff also founded a claim for damages on the ground that the commanding officer in arresting and remanding him had acted maliciously and without reasonable and probable cause. The Judge, whilst finding these allegations not proved, held that even had they been proved the action could not succeed.

Servants  
of the  
Crown, and  
tortious  
acts.

46. The failure of the first claim in *Fraser v. Balfour* (*supra*) illustrates the rule of law that public officers and servants of the Crown, though liable in respect of wrongful acts committed by them personally in their official capacity, are not liable in respect of wrongful acts committed by their subordinates, unless they have specifically ordered or ratified the particular act so as to make it substantially their own. The ordinary rule of *respondet superior*, under which a master is held liable for acts of his servant done within the scope of his employment, does not apply, because both senior and junior are servants of one master, the Sovereign, and their relationship to each other is not that of master and servant. In the particular case the First Lord had given no orders for the detention of the plaintiff, and indeed knew nothing of it till long afterwards; assuming the detention to be unlawful, the only persons liable would be those who actually detained the plaintiff and such superiors as specifically ordered (or ratified) the detention.<sup>1</sup>

Further, though all officers are in the employ of the Sovereign, no action in respect of their wrongful acts will lie either against the Sovereign or against the Department of State under which they work, so as to reach the public revenues.<sup>2</sup>

The above-mentioned rules apply, of course (*inter alia*), to injuries caused through the mishandling of service vehicles. If an officer or soldier driving such a vehicle by his recklessness or negligence injures a civilian, the driver may be sued, and is personally responsible for such damages as a jury may award. If the driver is a person whose duty it is, according to the rules of the service, to drive the vehicle, his superior, though riding in it

<sup>1</sup> As to whether the subordinate can escape liability to a civilian by proving that he acted under orders which were not necessarily or manifestly illegal, there is no clear authority; but the better opinion would seem to be that he cannot; see *per* Willes, J., in *Dawkins v. Rohrbach* (1886) 4 F. & F., at p. 831, and *per* Kennedy, J., in *Marks v. Frogley*, L.R. [1898], 1 Q.B. at p. 404. As to the position where the person injured is another soldier, see *ibid.*, and *per* Willes, J., in *Knightly v. Bell* (1886) 4 F. & F., at pp. 790, 805.

<sup>2</sup> See generally as to actions of tort against public officials, &c., *Raleigh v. Goschen*, L.R. [1898], 1 Ch. 78; *Bainbridge v. P.M.G.*, L.R. [1906], 1 K.B. 178; *Roper v. Public Works Commissioners*, L.R. [1915], 1 K.B. 45.

at the time, is not responsible for the negligent driving, unless indeed he has made such negligence his own, *e.g.*, by ordering an excessive speed to be maintained, or by not checking a speed which he must have known to be dangerous, in which case he would presumably be liable. On the other hand, if an officer entrusted with the use or control of a vehicle employs to drive it some subordinate not authorised to do so according to the rules of the service, it would appear that (apart from any defence on the ground of urgency) he employs such subordinate as his servant, and would be personally liable for his negligence. Ch. VIII

In cases of accident where no negligence can be imputed, an injured person can only appeal for compensation *ex gratia* to the department concerned, and frequently, even where negligence is admitted, this must be the only effective remedy if the driver is a "man of straw."

47. Public officers and servants of the Crown are not liable personally upon contracts entered into by them in their official capacity,<sup>1</sup> the remedy being (as a rule)<sup>2</sup> by petition of right against the Crown; but an officer may enter into a contract in such circumstances as to raise the inference that he is pledging his own credit, as in *Samuel Bros., Ltd., v. Whetherly*, where a Volunteer colonel was held personally responsible for uniforms supplied to the Corps.<sup>3</sup> Servants of the Crown and contracts.

In *Lascelles v. Rathbun*<sup>4</sup> it was held that the commanding officer of a brigade was not personally responsible for the price of provisions, &c., supplied to the officers' mess upon the order of the mess committee.

48. The following group of cases illustrates certain aspects of the law of defamation. In the first place it must be remembered that if a statement is in fact true no civil<sup>5</sup> action for damages will lie in respect of its publication, however injurious to the plaintiff. Thus, to record truly in a newspaper that a named officer has been dismissed the service by sentence of general court-martial for a named offence is not actionable.<sup>6</sup> Libel and slander.

49. Secondly, certain documents are by reason of their nature "privileged from production," *i.e.*, the officer who holds them for some Department of State cannot be compelled—and indeed ought not to be allowed—to produce them in court. In *Home v. Bentinck*<sup>7</sup> the plaintiff brought an action against the president of a court of inquiry for libel in publishing the court's report by communicating it to the commander-in-chief. It was held that the officer subpoenaed to produce at the trial the report and proceedings of the court was not at liberty to disclose them—as being State documents; and further, that office copies of them which the plaintiff held must not be admitted. In *Dickson v. Wilton*<sup>8</sup> the action was brought by an officer against his colonel in respect of letters written to the latter's superior and reflecting Documents privileged from disclosure.

<sup>1</sup> *Hosier Bros. v. Derby (Lord)*, *Secretary of State for War*, L.R. [1918], 2 K.B. 671.

<sup>2</sup> But see *Graham v. Public Works Commissioners*, L.R. [1901], 2 K.B. 781.

<sup>3</sup> L.R. [1907], 1 K.B. 708. L.R. [1908], 1 K.B. 184; *c.f. National Bank of Scotland v. Shaw* [1918] S.C. 133.

<sup>4</sup> [1919] 35 T.L.R. 347.

<sup>5</sup> In the case of a criminal prosecution for publishing a libel, the truth of the statement is not a defence unless it was for the public benefit that it should be published.

<sup>6</sup> *C. v. Oliver v. Bentinck* (1811) 3 Taunt. 456.

<sup>7</sup> (1820) 2 Broderip & Bingham 130.

<sup>8</sup> (1886) 1 F. & F. 419.

**Ch. VIII** upon the plaintiff. The plaintiff in fact succeeded; but in *Dawkins v. Lord Rokeby*<sup>1</sup> the court said distinctly that the Judge in *Dickson's case* was wrong in compelling, or even allowing, the Secretary for War to produce the letters in question; and in the case then before them they reaffirmed the principle that the proceedings of a court of inquiry ought not to be produced.<sup>2</sup>

Clearly, if a plaintiff cannot put before the court the document of which he complains, or even a copy (if he has one), he cannot succeed.<sup>3</sup>

Privileged  
communi-  
cations.

"Absolute"  
privilege.

50. Thirdly, the defence of "privilege" must be considered. In the case of some statements the law regards the occasion on which they are made as "privileged," either absolutely, or to a qualified extent. If the privilege is "absolute," no action will lie even if the statement is not only false but also made maliciously. It is a recognised rule of law that "whatever is said, however false or injurious to the character or interests of a complainant, by judges upon the bench . . . , by counsel at the bar in pleading causes, by witnesses giving evidence . . . is absolutely privileged."<sup>4</sup> In *Jekyll v. Moore*<sup>5</sup> it was held that a rider appended by a court-martial to their judgment of acquittal, and reflecting on the prosecutor's conduct, would not support an action. The plaintiff brought an action for libel against the president of a court-martial which had "most fully and honourably" acquitted a Colonel Stewart, and had appended to their finding the following remarks:—"The court cannot pass without observation the malicious and groundless accusations that have been produced by Captain Jekyll against an officer whose character has, during a long period of service, been so irreproachable as Colonel Stewart's, and the court do unanimously declare that the conduct of Captain Jekyll in endeavouring falsely to calumniate the character of his commanding officer is most highly injurious to the good of the service." The court decided that no action could be maintained, the Chief Justice observing, "If it appear that the charges are absolutely without foundation, is the president of the court-martial to remain perfectly silent on the conduct of the prosecutor, or can it be any offence for him to state that the charge is groundless and malicious? It seems to me the words complained of in the case form part of the judgment of acquittal, and consequently no action can be maintained upon it." In *Dawkins v. Lord Rokeby*<sup>6</sup> it was definitely laid down by the House of Lords that a duly constituted military court of inquiry must for these purposes be regarded as being upon the same footing as a court of law, and that oral and written statements made by an officer in the course of a military inquiry in relation to the

*Dawkins v. Rokeby.*

<sup>1</sup> (1873) L.R. 8 Q.B. 255; as to the principle upon which such privilege is based, see *Asiatic Petroleum Co., Ltd. v. Anglo-Persian Oil Co., Ltd.*, L.R. [1916], 1 K.B. 822. In *Anthony v. Anthony* [1919] 85 T.L.R. 559 privilege was claimed for medical history sheets. See also K.R. 572.

<sup>2</sup> See also *Chatterton v. Secretary of State for India*, L.R. [1895], 2 Q.B. 189.

<sup>3</sup> See, e.g., *Hovell v. Holland*, "Times," May 6, 1920, an action by an officer against the president of a military court of inquiry for libel alleged to be contained in the report of such court. The plaintiff abandoned the action upon a statement being made vindicating his character; but it was admitted that the action must have failed since the report could not be admitted in evidence.

<sup>4</sup> *Messenger v. Lamb* (1883), L.R., 11 Q.B.D. 588, 606.

<sup>5</sup> (1806) 2 Bos. & P., 841.

<sup>6</sup> (1878) L.R. 8 Q.B. 255; (1875) L.R. 7 H.L. 744.



conduct of an officer and with reference to the subject of that inquiry, enjoy "absolute" privilege. The same principle will *a fortiori* apply to courts-martial. Ch. VIII  
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51. If a false and defamatory statement is made on an occasion to which only "qualified" privilege attaches the plaintiff may possibly succeed, but in order to succeed he must prove that the statement was made maliciously and without reasonable and probable cause. As regards civilians, this is undoubtedly the position; but in the case of soldiers it would appear that, in cases arising out of the exercise and performance of military authority and duty, a subordinate officer has no legal redress (except perhaps in the House of Lords)<sup>1</sup> against his superior, notwithstanding that the latter's statements are made maliciously and without reasonable and probable cause. In *Dickson v. Wilton*<sup>2</sup> the lieutenant-colonel actually commanding a militia regiment sued the colonel of the regiment in respect of letters written to his immediate superior (Viscount Combermere) containing charges against the plaintiff, and also in respect of a conversation with a Member of Parliament as to a question to be put in the House with reference to such charges and to the plaintiff's dismissal. Lord Campbell directed the jury that *prima facie* the occasions were privileged, but that the privilege would be lost if the defendant had acted from other motives than a sense of duty; and the jury found a verdict for the plaintiff with damages. In *Dickson v. Combermere*<sup>3</sup> an action by the same plaintiff, and arising out of the same facts, not however for libel but for conspiring to procure the plaintiff's dismissal by false charges, Cockburn, C. J., told the jury to find for the plaintiff, if in their opinion the charges were made maliciously and without probable cause. They found, however, for the defendant.

The direction to the jury in *Dickson v. Wilton*, *supra*, was dissented from in *Dawkins v. Paulet*.<sup>4</sup> In that case an action for libel was brought in respect of a report made to the adjutant-general by the plaintiff's superior officer. It was held (before any evidence was given) that the plaintiff must fail even if he proved malice, for that no action would lie by one officer against another for an act done in the ordinary course of his duty as such officer, even if done maliciously and without reasonable and probable cause. Cockburn, C. J., however, took the opposite view. Reference may here be made incidentally to another action brought by the same Colonel Dawkins, in which he sued three officers for conspiring to make false statements to the commander-in-chief. It appeared that the defendants had formed a military court of inquiry to consider the plaintiff's professional conduct, and that the statement complained of was their report. Upon the admitted facts, it was held that the plaintiff must fail; but the court seemed to think that the defen-

<sup>1</sup> See *Fraser v. Balfour*, para. 44, *ante*.

<sup>2</sup> (1859) 1 F. & F., 419. In *Mitchell v. Kerr*, Rowe 537, decided by the Court of King's Bench in Ireland in 1801, the defendant had written two libellous letters to the commanding officer of a regiment which the plaintiff was about to enter. At the trial the jury were directed that, if they thought the letters were written merely for the purpose of bringing the plaintiff to a court-martial, the action would not lie, and they found a verdict for the defendant, which the Court of King's Bench refused to disturb.

<sup>3</sup> (1863) 3 F. & F. 527.

<sup>4</sup> (1869) L.R. 5 Q.B. 94; see also the first case of *Dawkins v. Readey* (1865) 4 F. & F. 841.

**Ch. VIII** dants would have been liable if there had been any conspiracy or confederation between them beforehand to present an unfavourable report irrespective of the evidence.<sup>1</sup>

*Fairman v. Ives.*

52. The distinction between cases where there is "qualified privilege" and cases where there is no privilege is illustrated by the two following decisions. In *Fairman v. Ives*<sup>2</sup> a civilian to whom an officer owed money wrote his version of the matter to the Secretary of State for War in order to try to get payment. Although the Secretary had no real authority to order payment it was held that the communication was privileged; and that, even if the statements were false, the officer could only recover damages on proof that they were made maliciously and without probable cause. On the other hand, where a naval officer acting as Government agent on board a hired transport wrote to Lloyd's imputing incapacity to the master of the transport, it was held that he ought to have written any complaints to his own employers, the Admiralty, and not to Lloyd's, and that therefore his letter enjoyed no privilege; and the jury finding his statements to be untrue awarded damages against him.<sup>3</sup>

*Adam v. Ward.*

The plaintiff, an army officer, having been placed on half-pay, made in a speech in Parliament accusations against his former brigadier, charging him with having reported unfairly upon officers under his command. The brigadier having referred these charges to the Army Council, the defendant as secretary to and by directions of the Council, wrote to the brigadier vindicating his character and reflecting upon the plaintiff; further, in accordance with his instructions he sent copies of the letter to the press. In an action for libel by the plaintiff, it was held that the occasion of the publication was privileged; that there was no evidence of malice; and that, having regard to the public way in which the plaintiff made his charges, no undue publicity had been given to the reply.<sup>4</sup>

#### (vi) Liability to Criminal Proceedings.

Liability to criminal proceedings for murder.

53. There are several authorities which show that where the death of a person is caused by some act of an officer done without jurisdiction, the officer is criminally responsible. Thus on the Devon Militia case<sup>5</sup> being cited in *Warden v. Bailey*,<sup>6</sup> Heath, J., expressed his opinion that, if the plaintiff in that action had died under the punishment inflicted by order of the court-martial, all the members of the court would have been liable to be hanged for murder.

Case of Governor Wall, 1802.

54. In the well-known case of *Governor Wall*<sup>7</sup> (plaintiff in the action already noticed of *Wall v. Macnamara*), the penalty of death was actually inflicted on the governor for a crime resembling in its nature and circumstances the conduct towards himself in respect of which he recovered damages.<sup>8</sup> This crime was the

<sup>1</sup> *Dawkins v. Saxe Weimar* (1876) L.R., 1 Q.B.D., 409.

<sup>2</sup> *Fairman v. Ives* (1822) 5 Barn. & Ald., 642; but this decision has been criticised; see *Hebbelich v. McIlwaine* L.R. (1894), 2 Q.B. 54.

<sup>3</sup> *Harwood v. Green* (1827) 3 C. & P. 141.

<sup>4</sup> *Adam v. Ward* L.R. [1917], A.C. 309.

<sup>5</sup> Para. 34, *ante*.

<sup>6</sup> 4 Taunt. at p. 77.

<sup>7</sup> *R. v. Wall* (1802) 28 State Trials 51.

<sup>8</sup> See para. 37, *ante*.

murder of Serjeant Armstrong, of the African Corps, in 1782, **Ch. VIII**  
by inflicting on him 800 lashes with such cruelty as to cause his death.

The governor appears to have been arrested on the charge shortly after his return to England, but to have absconded and kept out of the way for nearly 20 years, as he was not tried till 1802. The circumstances out of which the charge arose were as follows:—In July, 1782, the accused was in command of the garrison at Goree, an island on the coast of Africa, and about to leave for home. The men of the garrison had some pecuniary compensation due to them in respect of their having been put on reduced rations, and the paymaster responsible for meeting their demands was to leave with the governor. On the day before their departure, a number of men, headed by Armstrong, twice proceeded to the house of the paymaster to obtain a settlement of their accounts. According to the evidence for the prosecution, there was no appearance of any mutiny, and no disrespectful or disorderly conduct on the part of the men, who returned to barracks when ordered to do so by Wall. In the afternoon Wall ordered a parade, and by his order 800 lashes were inflicted on Armstrong by black men, not with the ordinary cat, but with a species of rope. It was stated that the accused stood by urging the black men to increased severity. Armstrong died shortly afterwards in hospital. For the defence some evidence was given that the behaviour of the men, and in particular of Armstrong, had been mutinous, and that a sort of drum-head court-martial had been held which ordered the punishment; and that the death of Armstrong was accelerated by drinking spirits in hospital.

Chief Baron Macdonald directed the jury that if there was no mutiny and no court-martial, and the punishment of 800 lashes with such an unusual instrument was ordered by the prisoner, there was certainly ground to infer malice; and pointed out that the governor in his report on his return made no mention of the existence of any mutinous spirit in the garrison. The jury found the prisoner guilty, and he was hanged at Tyburn.

55. General Sir Thomas Picton was tried in 1806 for having, Case of Sir Thomas Picton, 1806. while Governor of Trinidad, ordered the infliction of torture on a female from whom it was desired to obtain evidence in support of a prosecution for a robbery committed in her master's house. The general's defence was that the occurrence took place in the ordinary course of judicial proceedings, over which he presided as governor, and that torture was allowed in such cases by the law of the island. The case was tried twice, and was again elaborately argued on the special verdict found at the second trial, but judgment was never prayed. It appears, however, to have been thought at the time that had the opinion of the court been delivered, judgment would have been given against General Picton, though the jury found that by the law of Spain torture existed in Trinidad at the time of the cession of the island to Great Britain, and that no malice existed in the mind of the defendant, save so far as might be inferred from the acts complained of, if found to be illegal.<sup>1</sup>

<sup>1</sup> *R. v. Picton* (1812) 90 State Trials 228, 995 (note).

Case of  
Governor  
Eyre, 1898.

56. During some disturbances in Jamaica in 1865, the Governor, Mr. Eyre, proclaimed martial law in certain parts of the island. A man named Gordon, having been arrested in a locality excepted from the proclamation, was removed by the governor's order to a place where martial law prevailed and handed over to Colonel Nelson, the military commander, with instructions to consider the evidence with a view to a court-martial. Gordon was convicted and sentenced to death for treason and complicity with persons engaged in rebellion in the proclaimed district, but on a date prior to the proclamation. Nelson confirmed the proceedings, the governor concurred, and Gordon was executed. On their return to England both Eyre and Nelson were charged with murder, but in each case the grand jury threw out the bill.<sup>1</sup>

Criminal  
liability for  
offences  
committed  
out of the  
realm.

57. With respect to criminal liability for oppression and similar offences committed out of the realm it was enacted by 11 Will. III, c. 12, that any governor or commander-in-chief of any colony beyond the seas guilty of oppression to any of His Majesty's subjects, or of any other crime within their respective governments or commands, might be tried and punished by the Court of King's Bench in England, or by special commissioners. And the statute 42 Geo. III, c. 85, makes a similar provision for the trial and punishment of persons employed in the public service out of Great Britain in any similar military office or capacity.<sup>2</sup> It was under this Act that General Picton and Governor Eyre were charged.

Case of  
Ensign  
Maxwell,  
1807.

58. A mistaken impression of duty will not excuse an officer if he, without being justified by other circumstances, orders his men to fire, and some one is thereby killed, as is shown by the following case. In 1807, Ensign Maxwell, of the Lanarkshire Militia, was tried before the High Court of Justiciary in Scotland for the murder of Cottier, a French prisoner of war at Greenlaw, by improperly ordering a sentinel to fire into the room where Cottier and other prisoners were confined. Ensign Maxwell had the military charge of over 300 prisoners, confined in a building of no great strength. The prisoners were of a turbulent character, and to prevent their escape an order was given that all lights in the prison should be put out at 9 o'clock, and that if this was not done at the second call the guard was to fire upon the prisoners, who were often warned of this order. Ensign Maxwell having observed one night, on which there had been some disorder among the prisoners, a light burning beyond the appointed hour, twice ordered it to be put out, and, not being obeyed, directed the sentry to fire, but the musket merely snapped. Ensign Maxwell repeated the order, the sentry fired again, and Cottier received his mortal wound. At this time there was no symptom of disorder in the prison, and the prisoners were all in bed.

The general instructions issued from the adjutant-general's office for the conduct of the troops guarding the prison contained no such order as that upon which Ensign Maxwell had acted; and it appeared to be a mere verbal one which had from time to

<sup>1</sup> *R. v. Eyre* (1868) Finlason's Report.

<sup>2</sup> There are also statutes providing for the trial in England of persons guilty of extortion, &c., in India; *c.f.* A.A. 170 (3).

time in hearing of the officers been repeated by the corporal to the sentries on mounting guard, and had never been countermanded by those officers, who were also senior to Ensign Maxwell. The Lord Justice Clerk laid it down that Ensign Maxwell could only defend himself by proving specific orders, which he was bound to obey without discretion, and which called upon him to do what he did; and the jury found him guilty of the minor offence of culpable homicide, with a recommendation to mercy. He was sentenced to nine months' imprisonment.<sup>1</sup>

59. In *R. v. Thomas*<sup>2</sup> the prisoner, a sentinel on board H.M.S. "Achille", had been told by the man whom he relieved to keep off all boats unless they carried officers in uniform, or unless the officer on deck allowed them to approach; and he received a musket, three blank cartridges, and three ball cartridges. The boats pressed, upon which he repeatedly called to them to keep off; but one of them persisted and came close under the ship, and he then fired at a man in the boat and killed him. The jury found that he fired under the mistaken impression that it was his duty, but the judges were unanimous that it was murder, although they thought it a proper case for a pardon. Further, they were of opinion that if the act had been necessary for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified.

60. In the two preceding cases the prisoner had not in fact received specific orders to act as he did. How far a subordinate could plead the specific commands of a superior officer—such commands being not obviously improper or contrary to law—as justifying an injury inflicted on a civilian, is somewhat doubtful. In most cases the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead in practice to his acquittal on a criminal charge.<sup>3</sup>

61. With respect to the question how far defect in the jurisdiction or procedure of the court by whom a sentence is given, or want of authority, irregularity, or excess in the person by whom the sentence is executed, may render the court or person executing the sentence criminally responsible, there is but little to be found in the books. There appears, however, to be authority for the following propositions:—

- (i) If, first, the court which passed the sentence had no colour of jurisdiction in the matter, all its proceedings are a mere nullity, and both the court and the officer who executed the sentence are mere wrong-doers; and in the case of an execution the officer may perhaps in strictness of law be guilty of murder as a principal, and the members of the court may be guilty of a misdemeanour, and also as accessories to the murder.<sup>4</sup>
- (ii) If, secondly, the court had no jurisdiction, but it acted under colour of a writ or commission, such as might lawfully be issued, then although the writ or commission be irregular and so the sentence erroneous and voidable, it seems that it is not a nullity, and that neither the

<sup>1</sup> *R. v. Maxwell* (1809) *Buchanan*, Part II, p. 3.

<sup>2</sup> (1815) *Russell on "Crimes"* 8th Ed., p. 774.

<sup>3</sup> See *R. v. Trainor* (1864) 4 F. & F. 105; *Keighly v. Bell* (1866) 4 F. & F. 763; *Dawkins v. Rokeby* (1865) 4 F. & F. 806.

<sup>4</sup> *Hale, Pleas of the Crown*, i. 497, 501. *Steph. Dig. Crim. Law* (6th Ed.), Art. 218.

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court nor the officers who execute the sentence can be treated as mere wrong-doers, though the court may be guilty of a misprision.<sup>1</sup> If, again, the court had jurisdiction, but passed an erroneous sentence, neither the judge nor an officer who innocently executes the sentence is criminally liable.<sup>2</sup>

- (iii) The sentence must be executed by the proper officer, and if any person who is not duly authorised executes it he is a wrong-doer.<sup>3</sup>
- (iv) The execution must pursue the judgment, subject to any lawful alteration by the Crown, for if a man is beheaded who ought to have been hanged, the officer is a wrong-doer.<sup>4</sup>

There appears to be no authority for applying the doctrine of trespass *ab initio* to the case of irregular execution of a sentence, and it would seem that the officer would be liable only for so much of his acts as is in excess of his authority. Malice (in the popular sense of the word) in the officer appears to be wholly immaterial, so long as he keeps within the limits of his authority, for he is bound to execute the sentence; but if he grossly exceeds the measure of the sentence which he is authorised to inflict, and if he so barbarously flog a man sentenced to flogging as by plain excess to cause his death, he will be a wrong-doer as to the excess.<sup>5</sup>

(vii) *Protection of Persons Acting under the Army Act and other Acts.*

Protection  
of persons  
acting  
under  
statute.

62. It remains only to notice that officers are to a certain extent protected against actions by s. 170 of the Army Act, and by the Public Authorities Protection Act, 1893. The general effect of these enactments is that where legal proceedings are brought against an officer for any act done in pursuance, or execution, or intended execution of his duties, or for any alleged neglect or default in the execution thereof, then—

- (i) the proceedings must be begun within six months;
- (ii) judgment for the defendant carries "solicitor and client" costs;
- (iii) there are special provisions as to tendering amends and payment into court, which affect the question of costs;
- (iv) the proceedings must be brought in a "superior" court.

<sup>1</sup> Hale i. 497-509; Hawkins, Bk. i. ch. 28, s. 6.

<sup>2</sup> Hale i. 501.

<sup>3</sup> Hale i. 501; Coke, Inst. i. 128.

<sup>4</sup> Coke, Inst. iii. 52, 211; Hale i. 501.

<sup>5</sup> Hawkins, Bk. i. ch. 29, s. 5; and see *Governor Wall's case*, *supra*.

## CHAPTER IX

## HISTORY OF THE MILITARY FORCES OF THE CROWN

1. The object of this chapter is to give a short summary of the history of the military forces, and principally of those in England. For details the authorities cited in the notes must be consulted<sup>1</sup>.

Object of chapter.

2. The history of the forces may be divided into two main periods: the one prior, and the other subsequent, to the Restoration of Charles the Second in 1660. It was not until after 1660 that a Standing Army was raised, and the Militia organised under Act of Parliament. Before 1660 the organisation of the forces was much less systematic, although it rested on laws which have come down to the present time, and therefore deserve notice.

Two periods in history of forces.

## 1. GENERAL SKETCH OF HISTORY. .

*First Period.—General and Feudal Levies.*

3. Before the Norman Conquest, all freemen between the ages of 15 and 60 who were capable of bearing arms were bound to go forth to the host (*fyrð*), or general levy, at the king's summons. *Fyrð-fare* was one of the three liabilities of all owners of land in England.<sup>2</sup> Those guilty of neglecting it were subjected to a very heavy penalty called *fyrð-wite*, which might extend even to the forfeiture of the whole of their land. The levy of each shire took the field, down to the Norman Conquest, under its alderman or military chief of the shire, and after the Conquest under the sheriff.<sup>3</sup>

General liability to service in early times.

4. This general levy of all able-bodied<sup>4</sup> men in each county had a double aspect. As a civil force it was known as the *posse comitatus*, which the sheriff was entitled to call on to arrest criminals and suppress riots; and the obligation to serve in it was closely connected with the obligation attaching to every man of keeping watch and ward, and of following the hue and cry, which was directed against criminals.<sup>5</sup> In its other aspect it was a military force, and was called out, under the sheriff or some other officer

Double aspect of this service.

<sup>1</sup> See Clode, *Mil. Forces*, which contains many original authorities, chiefly for the period subsequent to 1660. For the earlier period many extracts from and references to original authorities are contained in Grose *Mil. Antiquities*, and in Scott's *British Army*. The powers of the Crown for the defence of the realm are enumerated and discussed in the *Ship Money Case* (see especially St. John's argument), Howell's *State Trials*, iii. 825, summarised in Clode, *Mil. Forces*, i. 354, 355. The constitution of the general levy and the feudal army, and the incidence of fiefal tenure, are described in the ordinary histories, such as Hallam's *Middle Ages*, and Constitutional History; Lingard's History; Taswell Langmead's *Constitutional History* (1st edn.); Stubbs, *Constit. Hist.*, and the articles on "Army" in the *Encyclopædia Britannica*, and also in legal books, such as Coke on Littleton and Blackstone's *Commentaries*. Fortescue's "History of the British Army," the chapters in "Social England" on military matters, and Oman's "History of the Art of War" may also be consulted.

<sup>2</sup> Afterwards called the *trinoda necessitas*, the other two liabilities being to maintain fortifications and to repair bridges. In some cases the age mentioned is 16 (Stubbs, *Constit. Hist.* i. 102 &c.).

<sup>3</sup> See Stubbs, *Constit. Hist.* i. 209, 469.

<sup>4</sup> Stubbs, *Select Charters*, 370-3; Stubbs, *Constit. Hist.*, i. 209, 636, ii. 220; Grose, *Mil. Antiquities*, i. 9; 13 Edw. I (Stat. Winton), st. 2, c. 6; 3 & 4 Edw. VI, c. 5; 1 Mar. sess. 2, c. 12; 1 Elis. c. 16.

<sup>5</sup> It was known as the *ban* or *fyrð* or expedition, Stubbs, *Constit. Hist.*, i. 81, 209, 494, 633. See Commissions in Rymer's *Fœdera*.

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of the Crown, to defend the realm in civil war or against foreign foes. The force was liable to serve only in the kingdom, and, except in case of invasion, only in its own county. Sometimes it was called out in all the counties; at other times, in particular counties only, as, for instance, in the northern counties, to resist the Scots, or in the midland counties, to resist the Welsh. The general levy was repeatedly called out by the Norman and Angevin kings (1066 to 1204) for the suppression of internal rebellion or of border warfare against the Welsh and Scots. It was unsuitable for warfare beyond the seas.<sup>1</sup> But it apparently served as a mode of obtaining troops down, at any rate, to the fourteenth century.<sup>2</sup>

Organisa-  
tion of  
general  
levy.

5. The general levy was organised by divers ordinances and statutes, which determined the arms, and in the case of the more wealthy, the horses which each man was to provide, in accordance with the amount of his land and goods. The sheriffs, mayors, and justices, as well as the constables annually appointed for the purpose in each hundred, were to enforce the obligation to serve and provide arms, and twice every year were to inquire into the arms provided, or, as it was termed, to hold "views of armour." Writs were often addressed by the king to the sheriffs and others to array or summon before them the men liable to service (whom from being sworn to keep arms were called *jurati ad arma*), and to punish defaulters; and the writ often directed such arrayers, or other persons named in it, to lead the force on active service.<sup>3</sup>

Lieutenants  
in counties.

6. In the time of Edward VI lieutenants were appointed in the counties to array, or lead, or both; and after the reign of Mary, such lieutenants, now commonly known as lords lieutenant, were usually appointed for those purposes.<sup>4</sup>

Right of  
purveyance.

7. Closely connected with the general levy was the Crown's prerogative of purveyance, which enabled the Crown to enforce the supply of carriages, carpenters, smiths, and other artificers, as well as of victuals, for military purposes.<sup>5</sup>

Thegns.

8. Even before the Norman Conquest the general levy took long to raise and was difficult to keep together, especially when operating outside the boundary of its own petty kingdom. For a more trustworthy, better-armed, and more permanent force, the old English kings relied on their military dependents, to whom they had granted land on the condition of military service. These

<sup>1</sup> It was summoned by William II to Hastings in 1094 to cross for a campaign in France but was dismissed.

<sup>2</sup> See Statutes, 1 Edw. 3, cc. 7, 15; 18 Edw. 3, st. 2, c. 7.

<sup>3</sup> Hen. II, Assize of Arms; Stubbs, Select Charters, 153, and the statutes 18 Edw. I (Stat. Winton), c. 6; 34 Edw. I, st. 2 in common editions; 2 Edw. III, c. 8; 5 Hen. IV, c. 2; 3 Hen. VIII, c. 3; 33 Hen. VIII, cc. 5, 9; 4 & 5 Phil. and Mary, c. 2. See also Acts referred to in the next note. See further, Grose, Mil. Antiquities, i. 2, 9, 74-96; Clode, Mil. Forces, i. 16, 345-57; Stubbs, Select Charters, 281, 343, 370-3; Stubbs, Constit. Hist., i. 536-7, 632, 694, ii. 293; Writs in Rymer's Fœdera and Palgrave's Parliamentary Writs.

<sup>4</sup> See Acts 3 & 4 Edw. VI, c. 5, s. 13, 1 Mar. sess. 2, c. 12, s. 12; 4 & 5 Phil. and Mary, c. 3, 1 Eliz. c. 16. Clode, Mil. Forces, i. 32; Scott's British Army, i. 328, 348; Grose, Mil. Antiquities, i. 79. Strype (Ecclesiastical Memorials ii. 278) says that lieutenants were first appointed in 3 Edw. VI (1549), and were appointed annually. They are spoken of by Camden (Britannia, i. clxvii, clxxxix), as appointed in troublesome times, and by Holinshed (Chronicles i. 153), as appointed in time of necessity. They were also appointed for several counties. An abstract of the authority given to a lieutenant by his commission is to be found in Lodge's Illustrations of British History, ii. 325; see also Scott's British Army, i. 348. After 1660, they became statutory officers appointed for the militia, see below, para 96.

<sup>5</sup> Stubbs, Select Charters, p. 359, and divers writs in Rymer's Fœdera; Stubbs, Constit. Hist., ii. 564; Clode, Mil. Forces, i. 347. Grose, Mil. Antiquities, i. 86. The Crown's right of purveyance was restrained by many Acts, and ultimately abolished by 12 Cha. II, c. 24.



warriors were originally known as *gesiths*, but from the ninth century onward that name is superseded by *thegn*. Alfred and his successors, under the stress of their Danish wars, incorporated in the thegnhood all the men of substance in the realm, whatever their origin, wealthy yeomen and merchants no less than members of ancient noble families.<sup>1</sup>

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9. The Norman Conquest in 1066 changed the condition of the upper ranks of the military force by substituting a wholly feudalized military aristocracy for the semifeudal thegnhood. The whole of England was carved out by William I into a number of military fiefs held from the Crown. Some were small, but many were very large—earldoms and baronies—the holders of which cut up their vast domains into smaller military fiefs or knights-fees dependent upon themselves. The holder of a military fief might therefore be either a tenant in chief holding directly from the Crown, or a sub-tenant holding under some great earl or baron. All alike were bound to attend the king at their own expense, on horseback and in armour, with their retainers, who might be either mounted or on foot.<sup>2</sup> After 1289<sup>3</sup> grants of land could only bind the holder to render service to the king or other superior lord, and not to the grantor of the land, and consequently the number of the retainers of the inferior lords gradually diminished. Some of the great earls and barons had an establishment of domestic knights not holding lands and entirely dependent on them.

Feudal levy.

The period of feudal service was limited by custom to forty days in each year, a term too short for foreign expeditions, and consequently the forces so raised were often induced by high pay to continue to serve as mercenaries (see below, para. 24). Though the earlier kings successfully demanded service abroad as well as service at home, the obligation to serve abroad was challenged at an early date (1198), and as time passed the feudal tenants displayed increasing reluctance to serve out of the kingdom and at length refused to do so.<sup>4</sup> The knights who, on horseback and in a coat of mail, formed the most prominent feature of warfare in the Middle Ages served under the feudal levy. The infantry were either the retainers of those knights, or raised from the general levy or by contract (see below, para. 24). The lancers and archers, however raised, were taken chiefly from the middle classes and highly paid.<sup>5</sup>

10. Personal service formed the basis alike of the feudal and of the general levy, but the obligation to serve in the general levy rested on every man as a citizen, or as it was termed "on every man within the allegiance of the king." The feudal levy was dependent on homage or on tenure under some feudal lord, whether

Composition in lieu of personal service.

<sup>1</sup> Stubbs, *Constit. Hist.*, i. 172, 210.

<sup>2</sup> Grose, *Mil. Antiquities*, i. 8, 120; Scott's *British Army*, i. 119, 138.

<sup>3</sup> By the statute known as "*Quia Emptores*" (18 Edw. I, c. 1), which, while authorising the sale of lands, provided that the purchaser of land (called in the Act the *feoffee*) should hold it of the chief or superior lord and not of the vendor (called in the Act the *feoffor*), and should render to the chief or superior lord the same services which the vendor rendered before the sale.

<sup>4</sup> Stubbs, *Constit. Hist.* i. pp. 284 ff; ii. pp. 283. The feudal levy appears to have been frequently summoned for service beyond the seas down to 1300, but fell into disuse before 1400. In 1198, Bishops Hugh, of Lincoln, and Herbert, of Salisbury, and in 1213 the northern barons, refused foreign service as not obligatory under their tenure, and it was opposed more seriously by the Barons of Norfolk and Hereford in 1296, 1297.

<sup>5</sup> Hallam, *Const. Hist.*, ii. 129; Stubbs, *Constit. Hist.* ii. 297.

**Ch. IX** — the king or some great earl or baron. Obviously there must always have been many feudal tenants unable to render personal service, and the calling out under the general levy of the whole population capable of bearing arms can but very rarely have been desirable or possible.<sup>1</sup> Service by deputy, or payment in lieu of personal service, and the calling out of a quota only, were accordingly allowed from very early times.<sup>2</sup>

**In case of feudal levy.** 11. In the case of the feudal levy, we must first notice the clergy, who held their lands by the tenure known as *Frankalmoign*, and who, as a rule, performed their military service by deputy or paid a composition,<sup>3</sup> though cases of military prelates are well known in history. Women also, and infants, and other feudal tenants who were unable to render personal service, either found substitutes or paid a composition<sup>4</sup>; and the payment of a composition in lieu of service was at an early date<sup>5</sup> extended from those who were unable to those who were unwilling to serve in person.

**Scutage or Esuage.** 12. Henry I appears to have been the first to require a number of knights, instead of serving in person for forty days, to equip and maintain a knight in service for a longer period: and Henry II began (about 1156) to levy a money composition for personal service, under the name of Scutage or Escuage.<sup>6</sup> This composition was probably levied at first only by agreement between the king and his subjects; but it subsequently became an abuse and gave rise to remonstrances as a tax levied by royal authority only; and from 1215 until the end of the reign of Edward II (1327) it was levied only under assessment by Parliament.<sup>7</sup> With the decay of feudalism the tax fell into disuse<sup>8</sup>; and it was ultimately, together with tenure by knight service, abolished during the Commonwealth, and finally extinguished on the Restoration in 1660.<sup>9</sup>

**In case of general levy, quota and contributions to expenses.** 13. Similarly, in the case of the general levy, the practice arose of calling on a certain quota only from each county to serve in person, and of requiring those not so called on to supply with arms and victuals, and to defray the expenses of those who served in person.<sup>10</sup> This developed into a sort of tax on the county or township, not under the authority of Parliament, and continued

<sup>1</sup> Stubbs, *Constit. Hist.*, ii. 290.

<sup>2</sup> As early as Henry II.

<sup>3</sup> Grose, *Mil. Antiquities*, i. 5; Scott's *British Army*, i. 138, 248. See, however, writs requiring personal service in Rymer's *Fœdera*; one is printed by Grose, *Mil. Antiquities*, i. 5.

<sup>4</sup> Grose, *Mil. Antiquities*, i. 6, 7.

<sup>5</sup> As early as Henry I.

<sup>6</sup> Stubbs, *Select Charters*, 281, 343, 364; *Constit. Hist.*, i. 623, 626, 632; ii. 291; Grose, *Mil. Antiquities*, i. 7, 8; Scott's *British Army*, i. 119, 138, 245. Escuage is in Latin *Scutagium*, from *scutum*, a name given to a fief held on military service.

<sup>7</sup> *I.e.*, "the common council of the realm." The Great Charter granted by John in 1215 required this; the omission of the requirement from later charters did not at first alter the practice. Stubbs, *Constit. Hist.*, i. 573; Grose, *Mil. Antiquities* i. 7; Coke, *Inst.*, i. 72 b, 74 b, note 37; Stubbs, *Select Charters*, 293, 343, 364.

<sup>8</sup> Coke, *Inst.*, i. 74 b, note 37.

<sup>9</sup> By Act 12 Cha. II, c. 24, together with other feudal incidents. Excise duties on beer were granted to the Crown as an equivalent.

<sup>10</sup> Stubbs, *Constit. Hist.*, ii. 297. Stubbs, *Select Charters*, 350. During the great French wars, 1308 to 1453, the main part of the armies led by Edward III and his successors were mercenaries (see below, paragraphs 24, 25). But some of them were still raised under commissions of array (see 1 Edw. 3, cc. 7, 15; 18 Edw. 3, c. 7).

in the form of a liability on the part of the county to pay a part of the expenses of the militia.<sup>1</sup> Ch. IX

14. Both the feudal and the general levy when summoned for war were summoned by writ from the Crown.

Mode of calling out feudal levy.

These writs did not always distinguish between those liable to serve under the feudal levy and those liable under the general levy, and those who served under the claim of purveyance<sup>2</sup>; though strictly in the case of the feudal levy, a special summons ought to have been issued to each baron, bishop, and abbot, and served by the sheriff, while those of lower rank were summoned by a general proclamation of the sheriff made in obedience to the royal writ.<sup>3</sup> The writs followed the latter practice as to the quota, and directed the commissioners under them to "elect" a number of men, that is, virtually to press them to join the army for general service. These writs in the reign of Edward I became known as "commissions of array."<sup>4</sup>

15. So far as these commissions were to raise a force for the defence of the realm against invasion, they were perfectly legal; but even if they were always legal in form, they were used, not merely for the legal purpose of raising troops to resist invasion, or to invade Scotland (which might be treated as resisting invasion), but also for the purpose of raising troops for foreign service. They threw on the counties the burden of finding soldiers for and paying the expenses of foreign wars, and thus indirectly taxed them without consent of Parliament, a practice which—after the rise of Parliament at any rate—was unconstitutional.

Questions as to legality of commissions for purpose of foreign service.

16. This grievance was accordingly resisted by Parliament; and, by a series of Acts beginning in 1327, it was provided that men should not be required to serve out of their counties except in the case of invasion; that men-at-arms, hoblers, and archers chosen to serve out of England should be paid by the Crown after leaving their counties; and that no man should be constrained to find men-at-arms, hoblers, or archers, unless bound by feudal service, or under the authority of Parliament.<sup>5</sup>

Resistance of Parliament:

17. During the Wars of the Roses and the reigns of the Tudors troops were raised in the most irregular manner. The greater part of the real fighting was done by volunteers hired on private account by rival barons, and by retainers gathered under the custom of "livery and maintenance," under which great men gave their badge and livery to their smaller neighbours, and undertook to champion their quarrels, the receiver, on the other hand, agreeing to come out in arms to aid his protector whenever the

Impressment during Wars of the Roses and in time of Tudors.

<sup>1</sup> Part of this was "coat and conduct money," said to have begun in the reign of Queen Elizabeth, with a promise of repayment by the Crown, and formed a subject of dispute between Charles I and the Parliament; Scott's British Army, i. 448; Clode, Mil. Forces, i. 21; Cobbett, Parl. Hist. ii. 649, 652, 642, 651, 653.

<sup>2</sup> This confusion began as early as Henry III.

<sup>3</sup> Grose, Mil. Antiquities, i. 65; Stubbs, Constit. Hist., ii. 296; Stubbs, Select Charters, 281.

<sup>4</sup> Stubbs, Constit. Hist., ii. 297. Hallam, Const. Hist., ii. 133, states the earliest commission of array as of 1324 and the last of 1557. But see Stubbs, Select Charters, 359, and Constit. Hist., ii. 297, and the commissions of musters of Elizabeth's reign, Grose, Mil. Antiquities, i. 79.

<sup>5</sup> Stubbs, Select Charters, 359; Constit. Hist., ii. 297, 417, 421, 568; iii. 285-7; Lingard, iv. ch. 2; Acts i. Edw. III, st. 2, c. 5, 7, 15; 18 Edw. III, st. 2, c. 7; 25 Edw. III, st. 5, c. 8; 4 Hen. IV, c. 15. The form of commissions of array was settled in Parliament in 5 Hen. IV, A.D. 1404. Stubbs, Constit. Hist., iii. 281. "Hobler" was a light cavalry soldier; Grose, Mil. Antiquities, i. 108; Scott's British Army, ii. 22, 329. For cases of armies raised at the charge of counties, see Sir R. Cotton's paper, printed in Grose, Mil. Antiquities, i. 74, and the Ship Money Case in Howell's State Trials, iii. 825.

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latter took the field. During these wars constitutional rights were ignored and forgotten, and not only were commissions of array continued, but the practice of impressing soldiers under them became so common, that impressment was assumed to be the right of the Crown<sup>1</sup>; while certain Acts in the time of Henry VIII and of Philip and Mary increased and enforced the liability to provide horses and arms in proportion to property,<sup>2</sup> and to practise archery,<sup>3</sup> and another Act of Philip and Mary imposed a penalty for not attending musters of commissioners authorised to muster men and levy the ablest for the wars<sup>4</sup>; and we learn from the Acts in Elizabeth's reign<sup>5</sup> as well as from Shakespeare,<sup>6</sup> that impressment was then commonly considered to be one of the prerogatives of the Crown.<sup>7</sup>

Repeal of  
Armour  
Acts in  
reign of  
Jas. I.

18. In 1604, the first Parliament of James I repealed the above-mentioned Acts of Henry VIII and of Philip and Mary<sup>8</sup> as regards the provision of armour and horses: and as that repeal was held to revive the older Acts respecting the provision of armour, those Acts were finally repealed in 1624, the last year of the reign of James I.<sup>9</sup>

Commissions of  
musters  
and trained  
bands.

19. The liability to serve in the general levy, however, continued, and was still enforced by means of commissions of array, which gradually developed into a rather different form under the title of Commissions of Musters.<sup>10</sup> These commissions directed the commissioners to register and muster all persons liable to provide horses, arms, or soldiers, and to select a convenient number of such persons to serve in person at the charge of their counties for the service and defence of the Crown, who were to be sorted into bands, and trained and exercised at the charge of the different parishes in the county. These commissions and this description of training appeared to have assumed at the end of the sixteenth and the beginning of the seventeenth century a quasi-permanent form under lieutenants of counties or other commissioners, and the bands trained under them became known as trained or train bands, and were mustered annually. At the same time there

<sup>1</sup> Stubbs, *Constit. Hist.*, iii. 285; Rymer's *Fœdera*; Hallam, *Const. Hist.*, ii. 130. See 1 Edw. III, st. 2, c. 15.

<sup>2</sup> 33 Hen. VIII, cc. 5, 9; 4 & 5 Phil. and Mar. c. 2. The last Act repealed the old Act, except 33 Hen. VIII c. 9, as to providing arms. It also required cities and towns to provide arms at the common charge. Compare Stubbs, *Select Charters*, 154.

<sup>3</sup> 3 Hen. VIII, c. 3; 33 Hen. VIII, c. 9, containing an order to practise archery, with a prohibition of unlawful games, as bowles, tennis, coitnee, &c.

<sup>4</sup> 4 & 5 Phil. and Mar., c. 3. This assumed the right to muster and impress.

<sup>5</sup> 5 Eliz. c. 5, s. 24; 35 Eliz. c. 4; 43 Eliz. cc. 3, 9.

<sup>6</sup> Shakespeare, *Hen. IV*, Part I, Act 4, sc. 2, Falstaff says: "I have misused the king's press damnably; I have got in exchange of 150 soldiers 300 and odd pounds. I press me none but good householders, yeomen's sons; inquire me out contracted bachelors, such as had been asked twice on the banns; such a commodity of warm slaves as had as lief hear the devil as a drum; such as fear the report of a culverin worse than a struck deer, or a hurt wild fowl \* \* \* and they have bought out their services; and now my whole charge consists of \* \* \* such as indeed were never soldiers, but discarded unjust serving men, younger sons to younger brothers, revolted tapsters, and ostlers trade-fallen; the cankers of a calm world and long peace; ten times more dishonourably ragged than an old-faced ancient; and such have I to fill up the rooms of them that have bought out their services, that you would think I had 150 tattered prodigals lately come from swine-keeping. \* \* \* Nay, and the villains march wide betwixt the legs, as if they had gyves on; for indeed, I had the most of them out of prison."

<sup>7</sup> Hallam, *Const. Hist.*, ii. 130, 131; Clode, *Mil. Forces*, i. 17; Grosse, *Mil. Antiquities*, i. 97; Rushworth, *Historical Collections*, i. 152.

<sup>8</sup> 33 Hen. VIII, c. 5; 4 & 5 Phil. and Mar., c. 2, repealed by 1 James I, c. 25, s. 7. See Hallam, *Const. Hist.*, ii. 133.

<sup>9</sup> By 21 Jas. I, c. 28. See Scott's *British Army*, i. 304.

<sup>10</sup> These musters are distinct from the musters of troops in pay.

existed, side by side with the trained bands, and in more or less connection with them, voluntary bodies, such as the Honourable Artillery Company in London, and similar bodies elsewhere, which doubtless owed their origin to the fact of its being fashionable to possess military acquirements.<sup>1</sup>

20. During the reign of Charles I, the commissions of musters were used for the purpose of exacting contributions in money and arms from the counties, and so taxing them without the consent of Parliament. These exactions were felt to be grievances, and complained of in Parliament, and, together with commissions for trying persons by martial law in time of peace and the practice of billeting, were, in 1628, declared to be illegal by the Petition of Right.<sup>2</sup> The exactions nevertheless continued, and, together with the impressment of soldiers and the powers of the lieutenants of counties, formed the subject of further complaints in the Parliament of 1640.<sup>3</sup>

Commissions of musters, a grievance under Charles I.

21. In the Long Parliament in the same year, Charles I, though at first claiming the power of impressment as the ancient and undoubted prerogative of the Crown, assented to an Act declaring impressment illegal.<sup>4</sup> This Act, after reciting rebellions in Ireland, which would endanger not only that kingdom, but also the kingdom of England, unless "a course be taken for the preventing thereof, and for the raising and pressing of men for those services," and also reciting that by the laws of the realm none of His Majesty's subjects ought to be impressed or compelled to serve out of his country, except in case of necessity or invasion, or except they be otherwise bound by the tenure of their lands, gave statutory authority to impress soldiers for service in Ireland.

Impressment declared illegal by Long Parliament.

22. The Parliaments of Charles I, while protesting against the exactions enforced by the lieutenants of counties and the illegality of impressment, did not complain of the mustering of the trained bands; and the value of the trained bands, or militia as they now began to be called, and the necessity for exercising them, and providing them with arms and ammunition, were recognised on many occasions by the Long Parliament.<sup>5</sup> Parliament, however, was extremely unwilling to leave the command of the militia under the control of the Crown exercised through the lieutenants of counties, and this question was one of the principal matters in dispute at the time of the rupture between Charles I and his Parliament.<sup>6</sup>

Trained bands or militia under Charles I.

<sup>1</sup> Grose, *Mil. Antiquities*, i. 79; ii. 324. Raikes, in his *History of Honourable Artillery Company*, i. 28-143, mentions the organisation of the trained bands in 1605, and that they were used to suppress riots. Provisions were made for storing and repairing the arms; Rymer, A.D. 1612; Cobbett, *Parl. Hist.*, ii. 782, 783, 850, 934; Clode, *Mil. Forces*, i. 29. Camden speaks of the commission to the lieutenant as a permanent commission of array; the former seems practically to have superseded the other. See also the commissions given to lieutenants, Lodge's *Illustrations of British History*, ii. 325. The commission there mentioned gives the lieutenant powers similar to those of the commission of musters and also power to use martial law, and to make a provost-marshal. See also Scott's *British Army*, i. 326-8, 379, 394, 402-407. An abstract of the commission issued before the Spanish Armada is printed in Scott's *British Army*, i. 345. See also Commissions in Rymer.

<sup>2</sup> 3 Cha. I, c. 1.

<sup>3</sup> As to complaints in Parliament, in addition to the complaints as to ship-money, Cobbett, *Parl. Hist.*, ii. 233-5, 549, 561, 642, 652-5.

<sup>4</sup> 16 Cha. I, c. 28. As to previous proceedings in Parliament, see Cobbett, *Parl. Hist.*, ii. 968, 977-981, 1067.

<sup>5</sup> Cobbett, *Parl. Hist.*, ii. 655. See also 782-783, 849, 934.

<sup>6</sup> Cobbett, *Parl. Hist.*, ii. 1069, 1243. Hallam, *Const. Hist.*, ii. 133-6. Gardiner, *History of England*, x. 96-110, 186-193.

Troops raised irregularly during Civil War.

Other classes of soldiers.

Crown grantees.

Criminals and debtors.

Mercenaries.

23. The mode in which troops were raised during the Civil War and the Commonwealth was necessarily irregular, and need not be noticed here.

24. Before passing to the second period after the Restoration in 1660 a short mention must be made of three other classes of soldiers raised in the earlier period, and of the mode of enforcing the service of soldiers :—

- (i) Holders of offices, pensions, lordships, or lands from the Crown were, at the end of the fifteenth century, made liable to serve at home or abroad, on pain of forfeiture.<sup>1</sup>
- (ii) Sometimes also criminals were pardoned, or debtors released, on condition of serving as soldiers.<sup>2</sup>
- (iii) The third and most important class was that of men who received pay for their services, who were termed "mercenaries," or "stipendiaries," terms which, though originally like the term "soldiers"<sup>3</sup> meaning those who were paid for their services, came at an early period to mean those who adopted arms as a profession, and served solely for pay. The convenience of employing mercenaries is obvious, having regard to the limitations on the service of the general levy and of the feudal levy mentioned above ; and from the date of the Conquest in 1066 mercenaries formed part of the forces of the Crown. The distinction, however, between these troops and those raised under the feudal or general levy was not always a wide one, as men raised under those levies were often induced by liberal payment to serve beyond the seas, or for more than 40 days, and doubtless often fell into the class of mercenaries.

Raising of mercenaries by indentures or contracts.

25. Mercenaries were usually raised by an indenture or contract between the king and some person of high position who was able by his influence or wealth to obtain soldiers. The men so raised were at first chiefly foreigners ; and as their employment in England was not only strongly objected to, but was rendered less necessary by the liability of the inhabitants of the realm to service at home, they were almost entirely employed on foreign service. After the raising of men compulsorily under commissions of array was, as before mentioned, restrained by Parliament in the reign of Edward III, the practice of raising troops by indentures became more common ; in fact, after the beginning of the reign of Henry V, the larger part of the forces of the Crown were so raised.<sup>4</sup>

Enlistment to serve the Crown.

26. At first the soldiers so raised were enlisted to serve the officer who raised them, but after 1491 (7 Henry VII), if not before, they were enlisted to serve the king,<sup>5</sup> and as early as the time of Charles I enlistment was carried on under beating orders issued by

<sup>1</sup> By 11 Hen. VII, c. 18 ; 19 Hen. VII, c. 1 ; Clode, Mil. Forces, i. 337, 350.

<sup>2</sup> Grose, Mil. Antiquities, i. 73 ; Scott's British Army, i. 282.

<sup>3</sup> Soldier being derived from "*solidus*" "*soldo*" or pay ; "*soldato*" in Italian meaning a hired man. For *conductiti*, or hired men, mentioned also in Ducange (the *conductores* of Italy), there seems to be no English equivalent.

<sup>4</sup> Grose, Mil. Antiquities, i. 57-77 ; Hallam, Const. Hist., ii. 130 ; Stubbs, Const. Hist., iii. 557 ; Magna Carta of King John, Art. 41 ; Stubbs, Select Charters, 294. In Rymer's *Fœdera*, there are contracts between Hen. I and Earl of Flanders, for supplying troops. See also Rymer, A.D. 1204, 1295 ; Grose, Mil. Antiquities, i. 188 ; Scott's British Army, i. 264, 279.

<sup>5</sup> See preamble to 18 Hen. VI, cc. 18, 19 ; 7 Hen. VII, c. 1 ; 3 Hen. VIII, c. 5, and remarks on these Acts in "*The Case of Soldiers*," Coke's Reports, Part VI, 27a.

the Crown.<sup>1</sup> The mode of raising troops by contract with an individual, sometimes for a sum of money, sometimes on condition of the contractor having the appointment of the officers of the force raised, continued,<sup>2</sup> notwithstanding the change of enlistment from a contract to serve the officer to a contract to serve the Crown, and notwithstanding that the establishment of a standing army altered the practice of enlisting for a particular war to that of enlisting for continuous service. Enlistment, however, was strictly regimental, that is, for service in the particular regiment with which the recruiting officer was connected.

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27. The obligation to serve (except in the case of a breach of that obligation by desertion in the field) was not enforced in military courts, but by civil penalties; in the case of the general levy by fine, seizure of property, and imprisonment, and in the case of the feudal levy by fine and forfeiture of the fief held on condition of rendering military service. Indeed, the Crown derived an income from distraining owners of fiefs to assume knighthood.<sup>3</sup> Moreover, the high-handed proceedings of fine and imprisonment which we find, even after the reign of Queen Elizabeth, exercised in other cases, were doubtless exercised for the purpose of compelling persons to serve.

Enforcement of obligation to serve.

28. In the case of mercenaries, these powers were insufficient and, therefore, a soldier deserting from the captain with whom he contracted to serve, and who was under an indenture with the Crown to provide a certain number of soldiers, was in 1439 declared by Parliament to be punishable as a felon, that is, in a civil court,<sup>4</sup> and at a later date this enactment was extended to soldiers who had contracted to serve the Crown.<sup>5</sup>

In case of mercenaries.

29. The punishment of desertion in a civil court became practically unnecessary after the Revolution, when the Mutiny Acts passed annually by Parliament provided a more speedy punishment by means of a military court.<sup>6</sup>

Punishment of desertion after Revolution.

### *Second Period—Standing Army.*

30. At the Restoration in 1660, considerable changes took place in the military system of the country. Knight service, with the feudal levy and its incidents, including Escuage, was finally

Changes in military system on the Restoration in 1660.

<sup>1</sup> So called from the expression at the beginning of the order, "to raise troops by beat of drum," which was derived from the actual use of the drum. See Clode, *Mil. Forces*, ii. 380-584.

<sup>2</sup> Clode, *Mil. Forces*, ii. 6, 581.

<sup>3</sup> Grose, *Mil. Antiquities*, i. 3, 8; Stubbs, *Constit. Hist.*, ii. 294; Hallam, *Middle Ages*, i. 170; Scott's *British Army*, i. 118, 122, 245; Cobbett, *Parl. Hist.*, ii. 549, 642.

<sup>4</sup> 18 Hen. VI, c. 19. Every felony at that time involved capital punishment and forfeiture of personal property.

<sup>5</sup> 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5; see also 2 & 3 Edw. VI, c. 2, revived by 4 & 5 Phil. and Mar., c. 3, s. 8. The Acts also provided for the punishment of certain frauds, as regards pay, &c.

<sup>6</sup> The above-mentioned Acts, 7 Hen. VII, c. 1; and 3 Hen. VIII, c. 5, were determined to be in force by the *Case of Soldiers*, Coke's Reports, Part vi, 27a, and were put in execution by James II, *Rex. v. Dale*, 2 Shower's Rep., 311; Howell's State Trials, xii. 262, note 7, but, being in practice rendered useless by the Annual Mutiny Acts, were repealed as obsolete by the Statute Law Revision Act, 1863. Grose, *Mil. Antiquities*, i. 65, writing before that repeal, observes that if the Mutiny Act were at any time to expire, the soldier would be punishable for desertion in a civil court under the above-mentioned Acts. See also Hale, *Pleas of the Crown*, i. 670-80; Blackstone's Commentaries, iv. 102; Clode, *Mil. Forces*, i. 350. Macaulay, in his *History* (iii. 43), says that the Acts put in force by James II were obsolete, and that the construction put upon them by the judges was considered by respectable jurists as unsound. It appears, however, from the report of the case that the illegality, if any, was in regard to the place of execution of the soldier convicted, and not in the fact of his prosecution.

Ch. IX — abolished<sup>1</sup>; the organisation of the general levy, of which the trained bands formed part, into the militia was completed under the authority of Parliament and at the same time the king laid the foundation of the present standing army.

No standing  
army before  
Restora-  
tion.

31. Before the Restoration there had been no standing army. Armies for particular wars had indeed been raised and paid for by Parliament, but were not kept on foot as standing armies after the conclusion of the wars for which they were raised, mainly, perhaps, on account of the cost.<sup>2</sup> A few troops were maintained in certain garrisons, and small corps of serjeants-at-arms,<sup>3</sup> yeomen of the guard,<sup>4</sup> and gentlemen pensioners<sup>5</sup> existed; but these corps were kept up rather as personal attendants on the king than for operations in the field.<sup>6</sup> The only other corps of a permanent character were the trained bands, and the Honourable Artillery Company of London, and similar associations, which were in effect either part of the general levy, or voluntary associations, and not in the nature of a standing army.<sup>7</sup>

Mainten-  
ance of  
standing  
army after  
Restora-  
tion.

32. The army raised by the Parliament during the Civil War was disbanded under Acts of Parliament<sup>8</sup> passed on the Restoration in 1660, but under a section in those Acts Charles II was enabled to keep up not only the garrisons in certain fortified places, but also one or two of the regiments which had aided in his restoration.<sup>9</sup> Moreover, he subsequently raised several other regiments by voluntary enlistment, and paid them out of the liberal grants made to him for life by Parliament. These regiments were maintained during his reign and that of his successor, James II, and their numbers were gradually increased, not merely on the occurrence or in anticipation of foreign war, but on other occasions.<sup>10</sup>

Mainten-  
ance of  
standing  
army in  
time of  
peace, with-  
out consent  
of Parlia-  
ment,  
declared  
illegal by  
Bill of  
Rights.

33. The maintenance of these troops, however, formed the subject of frequent remonstrances in Parliament,<sup>11</sup> and the increase of their numbers by James II was one of the causes which led to the Revolution of 1688. At that time, while the opponents of the Court party during the previous reigns had just escaped from the evils and the dangers of a standing army, the Court party had not forgotten how keenly they had felt them during the Commonwealth. Both parties therefore joined in procuring the declaration in the Bill of Rights<sup>12</sup>, "that the raising or keeping a standing army within "the Kingdom in time of peace *unless it be with the consent of "Parliament is against law"*; a declaration annually repeated, up

<sup>1</sup> By 12 Cha. II, c. 24.

<sup>2</sup> Grose, *Mil. Antiquities*, i. 61; Scott's *British Army*, i. 826.

<sup>3</sup> Now a purely civil body; Grose, *Mil. Antiquities*, i. 61, 178-179.

<sup>4</sup> Established by Hen. VII in 1486; Hallam, *Const. Hist.*, ii. 181; Grose, *Mil. Antiquities*, i. 61, 178-179.

<sup>5</sup> Established in 1509 by Hen. VIII; Grose, *Mil. Antiquities*, i. 61, 118-120.

<sup>6</sup> Grose, *Mil. Antiquities*, i. 61.

<sup>7</sup> Hallam, *Const. Hist.*, ii. 131-133.

<sup>8</sup> 12 Cha. II, cc. 9, 10, 15, 20, 27, 28.

<sup>9</sup> For instance, General Monk's regiment raised at Coldstream, afterwards the Coldstream Guards, which, together with other regiments, was disbanded and reformed on the same day. Grose, *Mil. Antiquities*, i. 61, 98; Mackinnon's *History of Coldstream Guards*. The territorial titles of other regiments, as 10th North Lincoln, 15th York, East Riding, arose similarly, no doubt, from the districts in which they were first raised.

<sup>10</sup> As, for instance, when the garrison of Tangier was brought to England on the abandonment of that settlement. Grose, *Mil. Antiquities*, i. 61, 98; Macaulay, *History of England*, i. 239, 294. See also Clode, *Mil. Forces*, i. ch. iv.

<sup>11</sup> Taswell Langmead, *Constitutional History*, 497, 600; Clode, *Mil. Forces*, i. ch. iv.; 81 Cha. II, c. 1.

<sup>12</sup> 1 Will. & Mar., sess. 2, c. 2 (1689). It will be observed that this Act is a declaration of old law, not an enactment of new.



to 1878 in the preamble to the Mutiny Act, and since then in the preamble to the annual Act bringing the Army Act into force. **Ch. IX**

34. Notwithstanding the insular position of England, the course of events since 1689 has never been such that the nation has been unwilling to acquiesce in the necessity for keeping up a standing army, and such a force has accordingly been maintained without intermission since the passing of the Bill of Rights. But the raising, government, and payment of the army have always been expressly sanctioned by Parliament, and only for a period of twelve months at a time, so that it is a statutory, and not a prerogative force, and the Crown is under the necessity of asking annually for the consent of Parliament to its maintenance.

Control of Parliament since the Bill of Rights.

35. The number of troops to be maintained is voted with the annual Army Estimates. This number (but not any included in supplementary estimates voted after the annual Act), is mentioned in the preamble to the annual Act,<sup>1</sup> and any unauthorised augmentation of such number has been always resisted by Parliament<sup>2</sup>; indeed Parliamentary authority has been invoked to enable the Crown to accept the services of Volunteers.<sup>3</sup> Any excess of forces above the number named in the preamble to the annual Act does not, however, affect the application to those forces of the Act enacting military law.<sup>4</sup> The provision of the Bill of Rights prevents the introduction of foreign troops into the kingdom without the consent of Parliament.<sup>5</sup>

As respects number of troops.

## 2. RAISING, GOVERNMENT, AND PAYMENT OF ARMY SINCE 1660.

36. A short statement will now be given of the manner in which the army has been raised, governed, and paid from the time of the Restoration until the present day.

Raising, &c., of army since 1660.

37. The final abolition of impressment in 1640 has been already mentioned, and with the notable exception of the measures taken for raising man power during the Great War, compulsory service in the army in the usual sense of the term has been unknown in this country. At different times Acts have been passed authorising the impressment of certain persons of blemished character, or unsettled mode of life,<sup>6</sup> but for the greater part of the period enlist-

Compulsory service replaced by system of bounties.

<sup>1</sup> Formerly the Annual Mutiny Act, subsequently the Army (Annual) Act, and now the Army and Air Force (Annual) Act. The first Act in which the numbers were mentioned was 12 Ann. c. 13, which regulated the number and discipline of the forces continued on foot after the conclusion of the peace of Utrecht.

<sup>2</sup> Clode, *Mil. Forces*, i. 85-89.

<sup>3</sup> See below, para. 128, *et seq.* See also s. 3 of the Reserve Forces and Militia Act, 1898.

<sup>4</sup> See Army and Air Force (Annual) Act, s. 2 (3), p. 417. The number of the Marines was not mentioned in the preamble to the Marine Mutiny Act, and is not mentioned in the Army and Air Force (Annual) Act, possibly because they partly belong to the Navy, whose numbers are not limited.

<sup>5</sup> Clode, *Mil. Forces*, i. 89.

<sup>6</sup> Provisions for the release from custody of criminals pardoned on condition of enlisting were contained in the Mutiny Act of 1702 (1 Ann. stat. 2, c. 20, s. 50), and repeated in subsequent Acts to 1711. The impressment of persons having no settled mode of living was allowed by Acts passed between 1703 and 1711 (2 & 3 Ann. c. 13, 3 & 4 Ann. c. 10, 4 & 5 Ann. c. 21, 6 Ann. cc. 17, 48, 7 Ann. c. 2, 10 Ann. c. 12, in the Record Edition of the Statutes), and again by Acts of 1744 (17 Geo. II. cc. 15, 28), 1745 (18 Geo. II. c. 10), 1758 (29 Geo. II. c. 4), 1757 (30 Geo. II. c. 8), 1778 (18 Geo. III. c. 53), and 1779 (19 Geo. III. c. 10). In 1758, the Court of King's Bench discharged a man improperly pressed under the Act of 1757, *Rex v. Kessell*, Burr. i. 637; and Grose, *Mil. Antiquities*, i. 98, note (f) records the bad results of the Act of 1779. Provisions were made for the release of insolvent debtors from custody on condition of enlisting or finding persons to serve in their places in 1696 (7 & 8 Will. III. c. 12, s. 14), 1702 (1 Ann. c. 19), and 1703 (2 & 3 Ann. c. 10). See also 1 Geo. III. c. 17, s. 57. See Clode, *Mil. Forces*, ii. 8-19, 48-55, 587; Reports on Recruiting, Parliamentary Papers, 1861, Vol. xv.; and 1867, Vol. xv.; Appendix by Mr. Clode.

**Ch. IX** — ment has been entirely voluntary, recruits having been induced to enlist by means of sums called bounties, paid to them on their enlistment, which in time of war rose to a considerable amount.<sup>1</sup> The period of the Great War must be regarded as exceptional. (See paras. 48-54.)

Competition for recruits between army and militia in 18th century.

38. During the wars of the greater part of the eighteenth century recruits were wanted for the militia as well as for the army, so that difficulties constantly arose in consequence of competition between the officers recruiting for the two forces. These difficulties were intensified by the use of the ballot for the purpose of raising the militia, inasmuch as parishes, in order to avoid the ballot by obtaining volunteers, and persons drawn in the ballot for service, in order to obtain substitutes, paid high prices to the very men who would otherwise have enlisted in the army.

Contracts to raise troops subsequently to the Revolution in 1688.

39. In time of war, since the Revolution in 1688, the old system of contract has upon occasion been reverted to, and troops have been raised by an agreement between the Crown and some nobleman or gentleman, who has undertaken to raise a corps on condition of receiving the nomination of all or some of the officers.<sup>2</sup>

System of recruiting by beating orders.

40. Even in time of peace, the mode of raising troops down to 1783 was by a species of contract between the Crown and the colonel, who received from the Crown a "beating order", enabling him to raise recruits, and was held responsible for enlisting sufficient recruits to raise and keep up the regiment to its proper numbers. The sums for recruiting expenses and for pay and clothing were issued to him in gross; and, subject to certain limitations as to the amount of bounties, he and his officers made their own bargains with the recruits.<sup>3</sup>

Mode of defraying expenses of recruiting.

41. The sums for recruiting expenses in each regiment were carried to a fund called the stock purse, the accounts of which were made up annually, and the surplus (if any) was handed to the captains of the companies. The commission to a major or colonel appointed him also to be a captain of the regiment, so that he had a company of which he shared the profits, while it was commanded by a captain-lieutenant. The balances, however, were seldom large; and when vacancies became numerous from losses on service or other causes the cost of recruiting exceeded the allowance, and the officers were liable to heavy expenses, from which they were not infrequently relieved by extra allowances. One survival of this system was the extra allowance made to the senior colonel and senior major.<sup>4</sup>

Pecuniary interest of officers in system.

42. Under the above system the officers had a pecuniary interest in keeping down the expenses of recruiting, both by obtaining men cheaply, and by prolonging the service of men enlisted, and so avoiding the necessity of obtaining recruits in their places. Fraudulent re-enlistment defrauded the captain, and as early as 1689 this offence was by the Mutiny Act made punishable with death.<sup>5</sup> At the same time the system held out great temptations to frauds in mustering and drawing pay for non-effective men as effective,

<sup>1</sup> For the history of enlistment since 1660, see Clode, *Mil. Forces*, ii. ch. xv. and the Parliamentary Papers mentioned in note 6 on p. 175.

<sup>2</sup> This system was known as that of "raising men for rank," see Clode, *Mil. Forces*, ii. 5. This system was last resorted to in 1854, in the Crimean War.

<sup>3</sup> Clode, *Mil. Forces*, i. 74; 105, ii. 2-3.

<sup>4</sup> Clode, *Mil. Forces*, ii. chap. xv., and App. note (WW), p. 568.

<sup>5</sup> 1 Will. & Mar., sess. 2, c. 4, s. 1; Clode, *Mil. Forces*, ii. 3.

which, though restrained by provisions of the Mutiny Act, continued to prevail until the pecuniary interest of officers in the pay of the men ceased.<sup>1</sup> Ch. IX

43. The above system was abolished in 1783,<sup>2</sup> and recruiting has ceased to be a matter of pecuniary interest to the officer, and is carried on by recruiting officers acting under the Director of Recruiting and Organisation in accordance with orders of the Army Council,<sup>3</sup> and the expenses are paid directly by the Crown. Of late years the payment of bounties has been generally discontinued, but the power to issue them in times of emergency is retained, and was exercised during the Great War.<sup>4</sup> Ordinarily a small pecuniary reward is given to recruiters and recruiting agents for each recruit raised and approved. Abolition of system, 1783.

44. The term of service, after it ceased on the introduction of the standing army to be for a particular war only, has varied continually. As a general rule, until the year 1847, the term of service of men enlisted in time of peace was for life; but whenever the exigencies of war required additional troops, recourse was had to enlistment for a limited term of years.<sup>5</sup> Term of service.

45. In 1847 was passed the Army Service Act, which, as amended in 1849, limited first engagements to ten years for the infantry and twelve for the cavalry or artillery, but allowed re-engagements for such further periods as would make up a total service of 21 or 24 years, as the case might be; and a soldier, with the approval of the military authorities, might continue his service after the 21 or 24 years, until he gave three months' notice of his wish to be discharged.<sup>6</sup> During the Crimean War (1855) and Indian Mutiny (1858) power was given temporarily to the Crown to enlist and re-engage for shorter periods, and also to re-engage men in the cavalry and artillery for a period making up 24 years' service.<sup>7</sup> Army Service Act, 1847.

46. By the Army Enlistment Act, 1867,<sup>8</sup> first engagements were to be for 12 years in the infantry as well as in the cavalry and artillery, with power to re-engage for such a period as would make up 21 years' service, whether in the infantry, the cavalry, or the artillery, and the provision as to a soldier continuing in the service after 21 years, until he gave three months' notice of his wish to be discharged, was re-enacted. Army Enlistment Act, 1867.

47. These provisions continued until the Army Enlistment Act, 1870,<sup>9</sup> when the system known as the short service system was introduced for the purpose of securing a body of reserves. Army Enlistment Act, 1870, and Reserves.

<sup>1</sup> Clode, Mil. Forces, ii. 8-10.

<sup>2</sup> By 23 Geo. III. c. 50, known as "Burke's Act."

<sup>3</sup> Clode, Mil. Forces, ii. 10, 20, 55. The Enlistment Act, 1870, 33 & 34 Vict. c. 67, conferred statutory power on the Secretary of State to issue orders. This was re-enacted in A.A. 93, and the power was transferred to the Army Council by the A.A. Act, 1909.

<sup>4</sup> See A.O. 283/1914.

<sup>5</sup> Under several Acts in the time of Anne and Geo. II, and also under the Acts for impressment before referred to, the term of service was for a limited term of years. After 1829 men were enlisted for life only, and this continued until 1847.

<sup>6</sup> 10 & 11 Vict. c. 37; 12 & 13 Vict. c. 78. The power of soldiers in the cavalry and artillery to re-engage for 12 years, making a total of 24, was repealed by the Act of 1849. S.1 of the first Act limited the first engagement to a maximum of 10 and 12 years respectively, but the words in the schedules as to the mode of filling up the attestation paper were construed to prevent an enlistment for any shorter period than the above terms. See the preamble to 18 & 19 Vict. c. 4.

<sup>7</sup> 18 & 19 Vict. c. 4; continued by 21 & 22 Vict. c. 55.

<sup>8</sup> 30 and 31 Vict. c. 34.

<sup>9</sup> 33 & 34 Vict. c. 67. The Act is now repealed: the provisions re-enacted in the Army Act are stated in Ch. X.

**Ch. IX**     The Army Reserve had been established in 1867 to consist of men enlisted from soldiers serving, or having served, in the army, and to be a separate body with their own officers. The Act of 1870 practically altered its character, and the Reserve Forces Act, 1882, has made corresponding alterations in the law. The Territorial and Reserve Forces Act of 1907<sup>1</sup> created a new branch of the Army Reserve, called the Special Reserve (re-named Militia in 1921), into which men who have not previously served in the regular forces can be enlisted. It was under this Act that the present Supplementary Reserve was formed in 1924.

The Militia Reserve was also established in 1867, but ceased to be raised after 1901, and in 1921 the Acts under which it was raised<sup>2</sup> were repealed.<sup>3</sup>

Raising of  
the armies  
for the  
Great War.  
1914—18.

48. At the commencement of the Great War in 1914 the existing short service system was modified, and, in addition to recruiting for the normal periods of engagements, men were enlisted into the regular army for "the duration of the war." These men formed what were called the "new armies."

In the following year the National Registration Act, 1915,<sup>4</sup> provided for the compulsory registration of all persons between the ages of 15 and 65 years who were not members of the forces, and from this register a military register was compiled of men between the ages of 18 and 40 years who were subsequently canvassed with a view to their voluntary enlistment.

The next step was the introduction by Lord Derby (then Director-General of Recruiting) of a scheme under which men were attested, classified in "groups" according to age and marital state, transferred to Class B Army Reserve, and allowed to return home until the "group" to which they belonged was mobilized as a whole.

Conscription

49. In view of the colossal nature of the struggle it became evident that the voluntary system was inadequate, and conscription was introduced in 1916 by the passing of successive Military Service Acts.<sup>5</sup> Under those Acts as finally passed, all male British subjects who were resident in Great Britain and were between the ages of 18 and 51, and medical practitioners up to the age of 56 years, were liable to compulsory military service. They were deemed to "have been duly enlisted in His Majesty's regular forces for general service with the colours or in the reserve for the period of the war, and to have been forthwith transferred to the reserve." Unless they were excepted under the terms of the Acts, they were called up for service in groups as in the case of recruits under the Derby scheme.

The calling up of conscripts was suspended in November, 1918, and the Acts expired on 31st August, 1921.

Transfer of  
soldiers  
during the  
Great War.

50. By virtue of the Army (Transfers) Act, 1915, and the Military Service Act, 1916 (Session 2)<sup>6</sup>, which expired at the termination of the war, soldiers could be transferred compulsorily to any corps, whether regular or territorial.

<sup>1</sup> 7 Edw. VII. c. 9.

<sup>2</sup> Reserve Forces Act, 1867, 30 & 31 Vict. c. 110; Militia Reserve Act, 1867, 30 & 31 Vict. c. 111, amended by 33 & 34 Vict. c. 67; 34 & 35 Vict. c. 86; Mutiny Act, 1878, s. 107; 42 & 43 Vict. c. 32, s. 5.

<sup>3</sup> See 11 & 12 Geo. V., c. 37.

<sup>4</sup> 5 & 6 Geo. V., c. 60.

<sup>5</sup> 5 & 6 Geo. V., c. 104; 6 & 7 Geo. V., c. 15; also 7 Geo. V., c. 12; 7 & 8 Geo. V., c. 28; 7 & 8 Geo. V., c. 68, and 8 Geo. V., c. 5.

<sup>6</sup> See 5 & 6 Geo. V., c. 43, and 6 & 7 Geo. V., c. 15, s. 14.

51. In addition to the augmentation of the regular and territorial forces, a new Volunteer Force was raised during the war for home service.<sup>1</sup>

Volunteer  
Force and  
Women's  
Corps.

In 1917 women were enrolled into the Women's Army Auxiliary Corps (later known as Queen Mary's Army Auxiliary Corps) in order to release serving soldiers for purely military duties. The Corps was not raised under statute, but the enrolment of members was a matter of contract between each member and the Army Council. The Corps, which was employed both at home and abroad, ceased to exist on 30th April, 1920.

52. To provide for a possible outbreak of hostilities in the period between the armistice of November, 1918, and the ratification of peace in 1920, a new class (Z) of the Army Reserve was formed in 1919,<sup>2</sup> and to it were transferred all men (both volunteers and conscripts) released from service with the colours. They were liable only to recall in the case of urgent military necessity. Class Z was abolished in March, 1920, the men being automatically discharged from the army.

Class Z,  
Army  
Reserve.

53. To provide for the armies of occupation, the normal short service system was modified, and men were voluntarily enlisted or re-enlisted for engagements ranging between 1, 2, 3 and 4 years with the colours and no reserve service.

Armies of  
Occupation.

54. In January, 1919, the normal short service enlistment system (referred to in para. 47) was restored, and is still in operation.

Resumption  
of the pre-  
war recruit-  
ing system.

55. On 31st March, 1921, a state of emergency was proclaimed under the Emergency Powers Act, 1920,<sup>3</sup> owing to a dispute in the coal mining industry which was of such a serious nature as to constitute a threat to the life of the community. The Army Reserve was called out by proclamation in April, and a new force called the Defence Force was raised. Men were voluntarily enlisted into the regular army for a special period of 90 days (or less). The force was disbanded in July, 1921.

Defence  
Force of  
1921.

56. The government of the army since 1660 is dealt with in Chapter II; it may, however, be observed here that when the army became a constitutional army, that is, dependent on the consent of Parliament for its maintenance, the obligation to serve was allowed to be enforced by courts-martial with military procedure, and not merely as before by the civil courts. The power to govern the army, as mentioned above, is annually given by Parliament; but when given is exercised, as in all branches of His Majesty's service, by the Crown alone. The manner in which that power is exercised is constitutionally subject, like the exercise of other prerogatives, to the advice of the ministers of the Crown, of whom the one particularly responsible for the army is the Secretary of State for War.

Govern-  
ment of  
army since  
1660.

57. With respect to the payment of the army, the annual sanction of the army by Parliament removes the old difficulties, as Parliament grants the money for its maintenance. But the existence of a standing army rendered necessary a permanent machinery for administering that money. The history and nature

Finance of  
the army.

<sup>1</sup> See para. 133; as to the Territorial Force, see para. 134, *et seq.*

<sup>2</sup> Under 6 & 7 Geo. V., c. 15, s. 12.

<sup>3</sup> 10 & 11 Geo. V., c. 55 (see p. 906).

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Grant of  
money by  
Parliament.

of that machinery is hardly within the scope of the present work, and therefore a brief statement only can be made.<sup>1</sup>

58. In the case of the army, as in that of the civil departments of Government, Parliament grants the necessary money on estimates submitted by the Crown, and the money granted is expended by the Crown, subject to control and audit on the part of Parliament.<sup>2</sup>

Issue of pay.

59. The pay of the soldiers of each regiment was formerly issued to the colonel by the Paymaster-General (a civil officer, and often a member of Parliament), and his subordinates, who were civilians. It is now practically issued by the Paymaster-General and disbursed through company, &c., commanders, each of whom renders an account of issues of pay to the regimental paymasters, who keep an account for each individual soldier.

Clothing.

60. The clothing of each regiment used to be supplied by the colonel, according to a pattern selected by a clothing board, and was paid for by him out of his allowance for "off-reckonings"; but since 1854 the clothing has been supplied direct by the clothing department.

Military  
stores.

61. The money granted for military stores was formerly expended by the civil part of the Board of Ordnance, a department which dates back before the Restoration, and of which the chief was the Master-General of the Ordnance, often a Cabinet Minister.

Barracks;

62. The money granted for barracks, after being for a time expended under a special barrack department, which was at first of a purely military character, and afterwards partly civil, was eventually transferred to the Board of Ordnance.

Provisions  
and trans-  
port.

63. The money granted for provisions and transport was expended through the Commissariat, who were civilians and officials of the Commissioners of the Treasury. From 1704 to 1836 there were other civil officers, called Controllors of Army Accounts, whose duty it was to examine and check army accounts and contracts, and to report to the Treasury on frauds and abuses. One of them was sometimes present with the army. Their office was in 1836 merged in the Board of Audit.

Army extra-  
ordinaries.

64. For many years, besides the expenditure of the sums which were voted by Parliament upon estimates, there were expended large sums known as "army extraordinaries," which began with extraordinary expenses which could not be foreseen when the estimates were submitted to Parliament; but the system became an abuse, and was ultimately abolished in 1836. While it existed, the money was expended at first entirely by military officers, but during the nineteenth century partly by military officers and partly through the Commissariat or other civil officers.

Secretary at  
War.

65. The office of Secretary at War dates from the reign of Charles II and began as that of a private secretary to the Sovereign in military matters. This officer afterwards usually held a seat in Parliament as one of the Ministry. His position and duties were vague, but he undoubtedly was a civil officer, and had, especially after 1783 (Burke's Act), great control over the financial and other civil administration of the army; after 1783 he was

<sup>1</sup> For a fuller account, see Clode, *Mil. Forces*, chs. vi, vii, xxi, xxiii, on which the following summary is founded.

<sup>2</sup> For early instances of this control, see *Forster's Life of Sir J. Eliot*, i. 158.

responsible for the estimates of military expenditure submitted to Parliament; but he had no direct control over the artillery or engineers, or over the *matériel* of the force. He was, however, subordinate to the Cabinet, and especially to the third Secretary of State, when that office was created.<sup>1</sup> The duties of the office of Secretary at War were taken over by the Secretary of State in 1855, and the office was abolished in 1863.<sup>2</sup> Ch. IX  
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66. By the side of the civilian officers above-mentioned there was the purely military administration, which remained under the direction of the Sovereign as Commander-in-Chief, assisted by a board of general officers, till the establishment of the office of the General Commanding-in-Chief in 1793.<sup>3</sup> The administration of military law was, however, checked by the Judge-Advocate-General, a Privy Councillor, and usually a member of Parliament and one of the ministers of the day, who advised the Sovereign on the legality of the proceedings of courts-martial.<sup>4</sup> The office of Judge-Advocate-General, having ceased to be paid, was, in 1892, made non-political, and was, from that date down to 1905, held by the President of the Probate, Divorce, and Admiralty Division. In that year, on a new appointment being made to the office, the position of the Judge-Advocate-General was considerably altered. He is now a permanent official under the orders of, and acting as legal adviser to, the Secretary of State; he is no longer a Privy Councillor, nor does he advise the Crown directly. Com-  
mander-in-  
Chief and  
Judge-  
Advocate-  
General.

The office of Commander-in-Chief ceased to exist in the early part of 1904, and the Patent creating the Army Council (February, 1904)<sup>5</sup> transferred to that body among other powers the powers theretofore exercised by the Commander-in-Chief under the Royal Prerogative.

67. At the end of the eighteenth century, a third Secretaryship of State<sup>6</sup> was created, the holder of which was to have a general superintendence of the army and the colonies. During the peace after 1815, when the army was less important, and the colonies grew more important, the colonial part of the work absorbed most of the Secretary of State's attention. The outbreak of the Crimean War again called greater attention to the army, and in 1854 a new Secretary of State was created, and shortly afterwards the whole civil administration of the army was placed in his hands. The powers and duties of the Board of Ordnance and of the Secretary at War were transferred to him, and the commissariat officials, and also the Paymaster-General, so far as Secretary of  
State for  
War;

<sup>1</sup> See para. 67 below, and Clode, *Mil. Forces*, chaps. iv., xxi.

<sup>2</sup> 26 & 27 Vict., c. 12.

<sup>3</sup> See Clode, *Mil. Forces*, chap. xxvi. The Sovereign was Commander-in-Chief, unless the office was granted away. The Duke of Marlborough, in Queen Anne's reign, was appointed Commander-in-Chief, and commissioned officers by his own authority. The Duke of Cambridge was appointed Commander-in-Chief in 1887, but had no power under the Patent to issue commissions; and neither Lord Wolsley, who succeeded the Duke of Cambridge as Commander-in-Chief in 1893, nor Lord Roberts, who succeeded to the office in 1901, had power to issue commissions. In India there is a Commander-in-Chief, but without power to commission officers, except temporarily, until the King's pleasure is taken.

<sup>4</sup> Clode, *Mil. Forces*, chap. xxvii.

<sup>5</sup> See para. 68 below.

<sup>6</sup> All the Secretaries of State, now seven in number, have equal powers, so that, though in practice different Secretaries of State administer different departments, technically there is no distinction between them. A third Secretary of State had been created in 1768, but the office was abolished in 1782 by 22 Geo. III, c. 82. It was, however, revived in 1794; Sir Erskine May, *Constitutional History*, iii. 360; Clode, *Mil. Forces*, ii. 320.

Ch. IX — concerned the army, were also placed under his orders.<sup>1</sup> In 1858 the commissariat officials were made military officers subject to the direction of the general commanding the force to which they were attached. But whether the officials engaged in the administration and discipline of the army are civil or military, the Secretary of State for War, a member of one of the Houses of Parliament and a Cabinet Minister, is responsible for the acts of all of them, and is the constitutional and responsible adviser of the Crown in all questions connected with the army. The ultimate responsibility of the Secretary of State was in no way affected by the reorganisation of the War Office and creation of the Army Council in 1904.

In 1870 the transfer of the officers who exercised the military administrative functions from the Horse Guards to the War Office brought every branch of army administration under the direct and immediate control of the Secretary of State. The actual army administration was divided between the officer Commanding-in-Chief, the Surveyor-General of Ordnance, and the Financial Secretary. In 1888<sup>2</sup> the Commander-in-Chief became solely responsible to the Secretary of State not only for the efficiency of the men but also of the *matériel*, the responsibility for all accounts, contracts, and manufactures remaining with the Financial Secretary. This concentration of military responsibility in the Commander-in-Chief was abolished in 1895<sup>3</sup> and divided between (1) the Commander-in-Chief, who retained the responsibility for general command over the military forces at home and abroad, and the general supervision of the military departments of the War Office; (2) the Adjutant-General, who was responsible for the discipline and training of the troops, and for recruiting and discharging; (3) the Quartermaster-General, who had direct charge of the food, forage, quarters, fuel, and transport of the army, and of the pay department; (4) the Inspector-General of Fortifications, who had charge of barracks, fortifications, &c., and of the engineer services; and (5) the Director-General of Ordnance, who issued demands for, inspected, and had custody of warlike stores and equipment, dealt with patterns and inventions, and administered the Army Ordnance Department and Corps. Each of these five officers was directly responsible for his department to the Secretary of State.

A further change was made in 1901,<sup>4</sup> when the Military Department was divided into four, instead of five, departments, the Adjutant-General being made subordinate to the Commander-in-Chief, while the Inspector-General of Fortifications, the Quartermaster-General, and the Director-General of Ordnance remained in the same position as under the Order of 1899.

Army  
Council  
1904-1914,

68. The question of the organisation of the army and the War Office again came to the front on the conclusion of the war in South Africa, and in 1904 (following the lines of the report

<sup>1</sup> See 18 & 19 Vict., cc. 10, 11; 26 & 27 Vict., c. 12.

<sup>2</sup> Orders in Council of 29th December, 1887, and 21st February, 1888.

<sup>3</sup> Order in Council of 21st November, 1895. An Order in Council of the 7th March, 1899, superseded the Order of 1895, but substantially reproduced its provisions, except that the direction of Army Factories was transferred to the Ordnance Branch, subject to the financial control of the Financial Secretary.

Order in Council of 4th November, 1901.



of the War Office (Reconstitution) Committee<sup>1</sup>) the administration of the army was placed in the hands of an Army Council, created by Letters Patent of the 6th February, 1904. These Letters Patent vested in that Council all the prerogative powers of the Crown in relation to the army which had theretofore been exercised by the Secretary of State, the Commander-in-Chief, and other principal officials, and by the Army (Annual) Act of 1909 there were transferred to the Army Council all the powers of the Commander-in-Chief and the Adjutant-General under the Army Act, and various other statutory duties set out in detail in the second schedule to the Act of 1909.

The Council originally consisted of seven members, viz.: the Secretary of State, four Military Members (the Chief of the General Staff, the Adjutant-General, the Quartermaster-General, and the Master-General of Ordnance), a Finance Member and a Civil Member.

The Secretary of State remained responsible to the Crown and Parliament for all the business of the Council, while under him the business was divided up as follows:—The Military Members were responsible for the administration of so much of the business relating to army organisation, disposition, personnel, armament and maintenance as was assigned to them or any one of them by the Secretary of State; the Finance Member was charged with army finance, and the Civil Member was responsible for the non-effective votes. The Secretary of State could assign any other business either to the Finance Member or the Civil Member. The Finance Member was assisted by an Assistant Financial Secretary who allowed and paid all moneys for army services, audited all cash expenditure, and prepared the accounts of that expenditure for Parliament.<sup>2</sup>

In addition to the above officials, there was an Inspector-General of the Home Forces, and an Inspector-General of the Overseas Forces, who acted under the orders of the Army Council, to whom they were charged with reporting as to the training and efficiency of the troops, the readiness and fitness of the army for war, and generally on the practical results of the policy of the Council. The Home and Overseas Inspectorates were amalgamated in 1914 into a single appointment held by an officer designated the Inspector-General of the Forces; this appointment lapsed the same year.

69. During the period of the Great War the Army Council was temporarily increased. The additions were as follows:—(1) the Deputy Chief of the Imperial General Staff, from December, 1915, to September, 1922; (2) the Director-General of Military Aeronautics from February, 1916, to 1918, when the Air Ministry was formed; (3) the Permanent Military Representative at the Supreme War Council, Versailles, in February, 1918, who ceased to be a member shortly afterwards, his name being omitted from the Letters Patent of 20th April, 1918; (4) the Director-General of Movements and Railways from February, 1917, to May, 1919; (5) the Surveyor-General of Supply, from May, 1917, to April, 1921. (This latter post had been anticipated in December, 1914

Army  
Council  
1914-18.

<sup>1</sup> Parliamentary Papers, 1904. Cd. 1968.

<sup>2</sup> Orders in Council of 16th August, 1904.

**Ch. IX** (to August, 1915), by the appointment of an additional Civilian Member to supervise army contracts.) The first three of these appointments were Military Members, and the last two Civilian Members.

During this period the allocation of duties among the members of the Council was frequently varied. The most important change was in 1916, when by Order in Council of 27th January, the Chief of the Imperial General Staff was entrusted with the responsibility for issuing the orders of the Government in regard to military operations. This arrangement was terminated in February, 1918. From July to December, 1916, and from April, 1918, to January, 1919, the Under-Secretary of State acted as the deputy of the Secretary of State in all matters affecting administration. He also became Vice-President of the Army Council, an arrangement which still continues, and the title of Civil Member lapsed.

Changes in  
1920.

70. In June, 1920, the Secretary of the War Office and the Joint Secretary of the War Office (formerly Assistant Financial Secretary) were appointed members of the Army Council. The former is still a member (as well as Secretary) of the Council under the title of Permanent Under-Secretary of State for War, but the other appointment lapsed in March, 1924.

The present  
Army  
Council.

71. The Council at present consists of the Secretary of State for War (President); the Under-Secretary of State for War (Vice-President); four Military Members, viz.:—the Chief of the Imperial General Staff (First Military Member), the Adjutant-General (Second Military Member), the Quartermaster-General (Third Military Member), and the Master-General of the Ordnance (Fourth Military Member); the Financial Secretary of the War Office (Finance Member); and the Permanent Under-Secretary of State for War, who is also the Secretary of the Council.

By the Order in Council of 21st March, 1924, the Under-Secretary of State is responsible to the Secretary of State for the administration of the Territorial Army Associations and War Department lands. The four Military Members are responsible to the Secretary of State for the administration of so much of the business relating to the organisation, disposition, personnel, armament and maintenance of the army as is assigned to them, or each of them, by the Secretary of State. The Finance Member is responsible to the Secretary of State for the finance of the army, and the Permanent Under-Secretary of State is responsible to the Secretary of State for the preparation of all official communications of the Council, and for the interior economy of the War Office; he is also responsible as Accounting Officer of Army Votes, Funds and Accounts, for the control of expenditure and for advising the Secretary of State and the administrative officers at the War Office and in commands on all questions of army expenditure. The Under-Secretary of State, the Finance Member and the Permanent Under-Secretary of State may also have other business assigned to them by the Secretary of State.

Ministries of  
Munitions,  
Pensions,  
National  
Service and  
Air.

72. During the Great War, three new ministries, viz., the Ministry of Munitions of War, the Ministry of Pensions and the Air Ministry, were created out of the War Office (and Admiralty), while another, the Ministry of National Service, added to its

existing duties in 1917, by taking over from the Adjutant-General's Department the task of obtaining men for the army. Ch. IX  
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The Ministry of Munitions was established in June, 1915,<sup>1</sup> to deal with all matters relating to the supply of munitions for the purposes of the war. The branches of the War Office which had previously dealt with the supply of munitions were transferred to the new Ministry. In 1921<sup>2</sup> the Ministry ceased to exist and the War Office resumed responsibility for the duties which had previously been transferred.

The Ministry of Pensions was created in December, 1916,<sup>3</sup> and in February, 1917, took over the duties relating to disability pensions previously discharged by the Lords of the Admiralty, the Army Council and the Chelsea Commissioners. In 1921<sup>4</sup> the duties of the Ministry in regard to disability pensions incurred in times of peace were re-transferred to the Departments from which they had been taken in 1917, but the Ministry still exists to deal with disability pensions payable in respect of the Great War or former wars.

The Air Ministry was created in 1918. In February, 1917,<sup>5</sup> an Air Board was created, on which the Director-General of Military Aeronautics had a seat. The Admiralty and Ministry of Munitions were also represented. The Board was responsible for design and for the allocation of aircraft between the naval and military wings of the air service. The continued growth of this Department led to the Air Force (Constitution) Act, 1917,<sup>6</sup> which provided for the establishment of a Ministry for Air and an Air Council, under a Secretary of State. The Council was established on 3rd January, 1918, by Order in Council, and the new Royal Air Force, in which were amalgamated the Royal Naval Air Service and the Royal Flying Corps, came formally into being on 1st April, 1918.

The Ministry of National Service was formed in August, 1917,<sup>7</sup> to prepare estimates of available man power and to deal with man power requirements of the army and vital industries. By an Order in Council of 23rd October, 1917, the business of recruiting was transferred from the War Office to the Ministry. It was re-transferred to the War Office in January, 1919.

73. The audit of military accounts has remained independent of the Secretary of State, and is now conducted on behalf of the House of Commons by the Audit Department under the Comptroller-General of the Receipt and Issue of His Majesty's Exchequer and the Auditor-General of the Public Accounts, commonly called the Comptroller and Auditor-General. Audit of  
military  
accounts.

### 3. MILITIA.

#### *General Sketch of History.*

74. It must be borne in mind that paras. 75-124 of this chapter relate to the old militia, which, until 1908, was raised under the

*Preliminary  
remarks.*

<sup>1</sup> 5 & 6 Geo. V, c. 51.

<sup>2</sup> 11 Geo. V, c. 8.

<sup>3</sup> 6 & 7 Geo. V, c. 65.

<sup>4</sup> 10 & 11 Geo. V, c. 23.

<sup>5</sup> 6 & 7 Geo. V, c. 68.

<sup>6</sup> 7 & 8 Geo. V, c. 51.

<sup>7</sup> 7 Geo. V, c. 6 (which became spent on 31st August, 1922).

**Ch. IX** Militia Acts, which were repealed in 1921 by the Territorial Army and Militia Act of that year.<sup>1</sup>

By the same enactment the title of "Militia" was given to the Special Reserve, which can be raised under the Territorial and Reserve Forces Act, 1907.<sup>2</sup>

Periods of  
history of  
militia.

75. The history of the old militia, since the Restoration in 1660, divides itself into five periods: (1) from 1660 to 1757, (2) from 1757 to 1815, (3) from 1815 to 1852, during which the militia was practically in abeyance, (4) from 1852 to 1908, during which the volunteer militia existed, and (5) from 1908 to 1921, during which no militia was raised.

General and  
local  
militia.

76. The militia, as it existed in 1907, was the general or regular militia, as distinguished from the local militia which was established at the beginning of the last century. At the beginning of the nineteenth century also several Acts were passed relating to forces other than the regulars and militia, which will require notice.<sup>3</sup>

First period.  
Organisa-  
tion of  
militia on  
Restoration  
in 1660.

77. The command of the trained bands, or militia, and the disposal of their arms, and the appointment and removal of the lieutenants of counties had, as before mentioned, formed one of the principal subjects of dispute between Charles I and the Long Parliament, in the course of which the name "militia" came into general use.<sup>4</sup> On the Restoration, therefore, it was necessary that these questions should be dealt with; and a Bill for settling the militia was introduced into the Commons in the Parliament by which Charles II was recalled, but met with great opposition, "because there was martial law provided in it."<sup>5</sup> Consequently, though the feudal levy was abolished, Parliament was dissolved before any militia Bill could be passed. In the next Parliament the question was at once taken into consideration, and an Act was passed<sup>6</sup> to legalise for a year the training of "the militia and land forces" under the lieutenants of counties, to whom Charles II had in the meanwhile issued commissions.

Acts passed  
1662-1745.

78. In the following year (1662) an Act was passed "for ordering the forces in the several counties in the kingdom"; and by this Act, as amended by an Act passed in 1663, the militia was at length organised, and the trained bands, except in the City of

<sup>1</sup> 11 & 12 Geo. V, c. 37.

<sup>2</sup> See para 125.

<sup>3</sup> As to these Acts and the local militia, see para 115, *et seq.*

<sup>4</sup> See above, para. 22. "Militia" seems to have been used as early as 1590; see Scott's British Army, i. 448 (note), Bacon's Essays, and Raikes' History of the Honourable Artillery Compy., i. 108, 110, and it is constantly used in the reports of the proceedings in Parliament in 1640 and 1641; Cobbett, Parl. Hist., ii.; though Whitelocke, in 1641, speaks of it as "this new word, this hard word"; *ibid.*, ii. 1078; Rushworth, Historical Collections, iii. pt. i. 525; Clode, Mil. Forces, i. 31 (note).

<sup>5</sup> Comm. Journ.: Cobbett, Parl. Hist., iv. 145.

<sup>6</sup> 13 Cha. II, stat. 1, c. 6. The preamble refers to the pending Bill for the militia

London, were ordered to be discontinued.<sup>1</sup> Further provision was made for the new force by Acts of the subsequent reigns,<sup>2</sup> and it was called out in 1690 on the occasion of the French invasion, and again during the rebellions of 1715 and 1745.<sup>3</sup> Ch. IX

79. The rebellion of 1745 brought into notice the general inefficiency of the force; and in 1756 attention was called by a panic as to a French invasion, and by the introduction of Hanoverian troops, for which the apprehended invasion had been made an excuse, to the necessity of strengthening the national defensive forces. Accordingly, in 1757 (rather against the will of the Ministers, and only for a period of five years) an Act was passed by which the force was reorganised on nearly the same basis as that on which the balloted militia rested in the 19th century.<sup>4</sup> Opposition arose in several counties to the execution of this Act, and difficulty was experienced in obtaining officers<sup>5</sup>; and several Acts were subsequently passed for the purpose of enforcing the execution of the law. Progress was, however, made, and the force was embodied in the year 1759.<sup>6</sup> Second period.  
Reorganisation of militia after rebellion of 1745.

80. The Acts relating to the militia were consolidated in 1761,<sup>7</sup> and again in 1786, when the greater number of the regiments had been raised,<sup>8</sup> and the utility of the force was emphatically recognised by Parliament in the preamble to the consolidating Act.<sup>9</sup> The Acts were again consolidated in 1802, after the peace of Amiens, by 42 Geo. III, c. 90, which was subsequently amended.<sup>10</sup> Consolidation of Militia Acts.

<sup>1</sup> 14 Cha. II, c. 3; 15 Cha. II, c. 4. As to the discontinuance of the trained bands in fact, see Clode, *Mil. Forces*, i. 86. The old power to enlist and levy the trained bands in the City of London continued unaltered (being saved by the various Militia Acts) until 1794, when an Act was passed (34 Geo. III, c. 81), for the organisation of a militia force in the City. This Act (as amended by 35 Geo. III, c. 27) was subsequently repealed by 36 Geo. III, c. 92; and that Act, as amended by 39 Geo. III, c. 82 (see also 42 Geo. III, c. 90, s. 153), was in its turn repealed by 1 Geo. IV, c. 100, which is still partly in force (see 11 & 12 Geo. V, c. 37, sched. 2). As to the use of the term "trained bands" in the above Acts, see Raikes' *History of the Honourable Artillery Company*, ii. 146.

<sup>2</sup> 7 & 8 Will. III, c. 16, which, after being re-enacted by 9 Will. III, c. 31, 11 Will. III, c. 14, 12 Will. III, c. 8, was made perpetual; 1 Ann. stat. 2, c. 15, 4 & 5 Ann. c. 10, 6 Ann. c. 28, 10 Ann. c. 33, 1 Geo. I, stat. 2, c. 14, 9 Geo. I, c. 8, 19 Geo. II, c. 2.

<sup>3</sup> See preamble to 2 Will. & Mar., sess. 2, c. 12, and 7 Geo. II, c. 23. Lord Mahon, *Hist. of England*, iii. 306-422.

<sup>4</sup> 30 Geo. II, c. 25, amended by 31 Geo. II, c. 26, 32 Geo. II, c. 20, 33 Geo. II, c. 22, 24. See Clode, *Mil. Forces*, i. 39-42; Cobbett, *Parl. Hist.*, xv. 782; Lord Mahon, *History of England*, iv. 133.

<sup>5</sup> Clode, *Mil. Forces*, i. 39; Lord Mahon, *History of England*, iv. 134.

<sup>6</sup> Clode, *Mil. Forces*, i. 40.

<sup>7</sup> By 2 Geo. III, c. 20, which was at first enacted for seven years only, but was made perpetual by 9 Geo. III, c. 42. It was amended by 4 Geo. III, c. 17; 5 Geo. III, c. 34, 36; 6 Geo. III, c. 30; 7 Geo. III, c. 15, 17; 9 Geo. III, c. 42; 11 Geo. III, c. 32; 16 Geo. III, c. 3; 18 Geo. III, c. 14, 59; 19 Geo. III, c. 72, 78; 20 Geo. III, c. 8, 44; 21 Geo. III, c. 7, 18; 22 Geo. III, c. 6, 62; 24 Geo. III, sess. 1, c. 13.

<sup>8</sup> In the circular of 30th April, 1833 (printed in Clode's *Militia Act*, 1875), the regiments are described as having been raised as follows: 47 before the peace of 1763, 22 between the peace of 1763 and the peace of 1783, and 21 for the revolutionary war. This circular announced their precedence as settled by lot.

<sup>9</sup> See Clode, *Mil. Forces*, i. 43. The Act of 1786 (26 Geo. III, c. 107) was amended by 33 Geo. III, c. 8; 34 Geo. III, c. 16, 47; 35 Geo. III, c. 83; 38 Geo. III, c. 53; 39 Geo. III, c. 90, 106; 39 & 40 Geo. III, c. 1; 42 Geo. III, c. 12. In addition to these Acts, several Acts were passed relating to the supplementary militia, i.e., an addition to the militia above the quota, and also Acts relating to the militia of particular localities which had separate militia corps, namely—

(1) The City of London, 34 Geo. III, c. 81, and 35 Geo. III, c. 27, which were consolidated by 36 Geo. III, c. 92, and that Act as amended by 39 Geo. III, c. 82, was saved in 1802 by 42 Geo. III, c. 90, s. 153, but was repealed in 1820 by 1 Geo. IV, c. 100.

(2) The Militia in the Stannaries, known as the "Regiment of Miners," 38 Geo. III, c. 74, and 42 Geo. III, c. 72, the latter of which recites that a great length of time had elapsed since any commission had issued to the Warden of the Stannaries to array, arm, and exercise the miners. See *Militia Act*, 1882, s. 49.

The separate Militia of the Tower Hamlets (37 Geo. III, c. 25, 75) was merged in the Militia of the County of London by the Local Government Act, 1888, s. 81.

<sup>10</sup> See especially 43 Geo. III, c. 60; 51 Geo. III, c. 118; 15 & 16 Vict. c. 50; 23 & 24 Vict. c. 120.

## Ch. IX

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Between 1802 and the peace in 1815, numerous additional Acts were passed with respect to the militia, some of which were of a permanent character, but the greater number were temporary measures, and had reference either to the relations between the militia and the other forces then raised under certain special Acts, or to enlisting men for the militia by beat of drum, or to enlistment from the militia into the army.<sup>1</sup> Except in the years 1830 and 1831,<sup>2</sup> a ballot for the militia does not seem ever to have been actually held since 1810.<sup>3</sup> A motion in Parliament in 1813 to suspend the ballot was defeated, and in 1814, on a motion in relation to the disembodiment of the militia, reference was made to the hardship of keeping balloted men away from their families.<sup>4</sup>

Third  
period,  
1815-1852.

81. After the peace of 1815 the militia was allowed practically to fall into abeyance, although the permanent staff were maintained. The first step was to allow the annual training to be suspended by Order in Council.<sup>5</sup> Then, from 1829 to 1865, an Act was passed annually suspending all proceedings for raising the militia by ballot, unless ordered by Order in Council, and the Act of that year was annually continued by the Expiring Laws Continuance Act<sup>6</sup> until 1921, when it was repealed with the remaining Militia Acts.

Fourth  
period.  
Reorganisa-  
tion of the  
militia in  
1852.

82. In 1848 some excitement was felt with respect to the military position of the country in consequence of the great increase of armaments on the Continent, particularly in France. The subject was mentioned in Parliament, and the Prime Minister (Lord John Russell), in making his financial statement in 1848, expressed his intention of introducing a Bill for re-establishing the militia. Nothing, however, was done until 1852, when he proposed to reorganise the local militia, but this proposal was rejected by the House of Commons, in favour of an amendment (proposed by Lord Palmerston) to reorganise the regular militia. This vote led to a change of Ministry, and the next Ministry, of Lord Derby, introduced a Bill for reorganising the regular militia, which was ultimately passed into law,<sup>7</sup> and thereafter the militia was, down to 1908, raised by voluntary enlistment. The militia law was amended from time to time between 1852 and 1875 by Acts, some portions of which applied to the volunteer militia, and others only to the force when raised by ballot.<sup>8</sup>

<sup>1</sup> See 43 Geo. III, c. 10, c. 19, c. 47, c. 50, c. 100; 44 Geo. III, c. 54, s. 16, c. 56; 45 Geo. III, c. 31; 46 Geo. III, c. 91, c. 140; 47 Geo. III, sess. 2, c. 37, c. 71; 49 Geo. III, c. 4, c. 53; 50 Geo. III, cc. 24, 25; 51 Geo. III, c. 17, c. 20, c. 118, c. 123; 53 Geo. III, c. 81; 54 Geo. III, c. 11; 55 Geo. III, c. 65, c. 168. As to these Acts, their reasons and effect, see Clode, *Mil. Forces*, i. 287. Besides the above, there were Acts relating to Scotland and Ireland.

<sup>2</sup> See note 6 below.

<sup>3</sup> See Mr. Clode's evidence and App. XVII to report of Mr. Stanley's Militia Committee, 1876 (Parliamentary Paper, 1877, C.—1654).

<sup>4</sup> Clode, *Mil. Forces*, i. 290-299; Annual Register, 1813, p. 207.

<sup>5</sup> First, by a temporary Act, in 1816 (56 Geo. III, c. 64), and in 1817 by a permanent Act (57 Geo. III, c. 57), under which orders for suspension were made in almost every year.

<sup>6</sup> 10 Geo. IV, c. 10. Orders in Council directing a ballot were made and put in force in 1830 and 1831 (Clode, *Mil. Forces*, i. 47; Parliamentary Papers, 1834, vol. 42, 103; *Life and Struggles of William Lovett*, p. 65; Hansard (1832), x. 376). The Act of 1865 was 28 & 29 Vict., c. 46. The number of the permanent staff was reduced by the Act of 1829, and again in 1835 by 5 & 6 Will. IV, c. 37, which also provided for the militia stores of a county being transferred to the Ordnance Department.

<sup>7</sup> 15 & 16 Vict., c. 50. See Hansard's Parliamentary Debates for the years 1848 and 1852; Clode, *Mil. Forces*, i. 46, 305-307.

<sup>8</sup> See 16 & 17 Vict., cc. 116, 133 (England); 17 & 18 Vict., c. 13, c. 165 (England); c. 106 (Scotland); c. 107 (Ireland); 18 & 19 Vict., c. 19 (Ireland); c. 100; 22 & 23 Vict., c. 33; 23 & 24 Vict., c. 84; c. 120 (England); 22 & 23 Vict., c. 18; 33 & 34 Vict., c. 68; 34 & 35 Vict., c. 86; 36 & 37 Vict., c. 68.

83. In 1875 the enactments which related to the volunteer militia, and also those which related to the organisation, command, government, and service of the force, whether raised by ballot or by voluntary enlistment, were consolidated by the Militia Voluntary Enlistment Act, 1875 (38 & 39 Vict., c. 69), which was subsequently replaced by the Militia Act, 1882 (45 & 46 Vict., c. 49). Both of these Acts left unrepealed those enactments which related solely to the raising of men by ballot.

Militia Act,  
1875.

### *Raising of the Militia.*

84. The Act of 1662 followed the old law by requiring owners of property to furnish horses, horsemen, foot soldiers, and arms, as specified in the Act, in proportion to the value of their property; and the liability of persons of small property was to be discharged out of a rate levied in the parish for foot soldiers and arms. The Act, though not expressly recognising volunteers, enacted that a person liable should not be obliged to serve in person, but might provide an approved substitute.

Raising of  
the militia.  
Act of 1662.

85. In 1757 the mode of raising the men was entirely changed, a liability on the part of the county and parish to provide men being substituted for a liability on the part of individuals. A certain number of men specified in the Act (usually known as the quota) were to be raised in each county, subject to certain powers of re-adjustment by the Privy Council. Lists of all men between the ages of eighteen and fifty in every parish in each county (except those expressly exempted) were to be sent to the lord lieutenant and the deputy lieutenants, who were to hold meetings, and apportion the quota of the county among the different sub-divisions, and again sub-divide the quota of each sub-division among the parishes in proportion to their populations, and then choose men by lot from each parish list up to the number apportioned to that parish. Every man so chosen had to serve for three years, or to provide a substitute, and vacancies were to be filled from time to time by a like process of ballot, which was to be repeated every three years. The above was practically the ballot system as it existed immediately before the repeal of the Acts in 1921, although it had been frequently modified in details. Thus, the age of men liable to serve was altered from time to time, and was, under the Act of 1860,<sup>1</sup> fixed between 18 and 30. Exemptions also were added, as, for instance, the exemption of a poor man with more than one child.<sup>2</sup> On the other hand, the term of service was extended from three years to five.

Alteration  
in mode of  
raising men  
in 1757.

86. In 1761 the raising of the militia was made compulsory by the imposition on counties of an annual fine for not raising the quota.<sup>3</sup> This fine was at first 5*l.* for each man deficient; at one period it was as high as 60*l.*, and later 10*l.* per man.

Fine for not  
raising  
quota.

<sup>1</sup> 23 & 24 Vict. c. 120.

<sup>2</sup> 42 Geo. III, c. 90, s. 43. At first Protestants alone were capable of serving; this restriction was abolished in 1797 for the supplementary militia (37 Geo. III, c. 22); and in 1802 for the regular militia.

<sup>3</sup> 2 Geo. III, c. 20, and amending Acts. This was re-enacted in 1769 (9 Geo. III, c. 42, which Act states that militia had not been raised in some counties), and again on the consolidation of 1786 (26 Geo. III, c. 107, s. 116, &c), and at the beginning of the nineteenth century, 42 Geo III, c. 90, s. 158; c. 91, s. 150 (as to Scotland.)

Volunteers  
recognised  
by Act of  
1758.

87. Besides the substitutes allowed after 1662, the Act of 1758 enabled a parish to offer volunteers, and if they were accepted, to escape to that extent the liability to a ballot. If a volunteer so accepted failed to appear and be sworn and enrolled, the parish was bound to find another, or to pay out of the rates a fine of 10*l*.<sup>1</sup> The Act of 1758 further empowered captains, on the embodiment of the militia, to augment their companies by volunteers, and this and the amending Acts enabled lords lieutenant of counties to accept, first, single volunteers, and then whole companies of volunteers with their officers.<sup>2</sup> At the end of the 18th century these volunteers developed into a separate force under separate Acts.

Changes in  
system  
during  
nineteenth  
century.

88. In 1810 the enlistment in the militia of volunteers by beat of drum as supernumeraries, to a number exceeding the regular quota, was authorised, and the ballot was only to be resorted to in case of a deficiency.<sup>3</sup> The militia was thus a force raised by ballot with the subsidiary aid of voluntary enlistment. In 1852, however, the system was changed, and the militia became a force of voluntarily enlisted men, with the ballot in reserve, as the Act of that year empowered the Crown in England to resort to the ballot, in case the quota in any county was not raised by voluntary enlistment, and also in case of invasion or imminent danger. In 1854 Acts were passed which provided for the raising of militiamen both in Scotland and Ireland by voluntary enlistment.<sup>4</sup>

The militia when last raised consisted entirely of men voluntarily enlisted under the directions of the Secretary of State for War, and the suspension of the enactments as to the ballot was annually continued until 1921 (see para. 81).

Numbers of  
the militia.

89. In 1662 the number of men to be raised was not limited, except so far as it depended on the wealth and number of the persons liable to furnish or contribute to furnish men and horses.

Quotas  
under  
various Acts  
since 1757.

90. In 1757 the number to be raised was limited by the Act which fixed the quota to be raised by each county. The quota was altered from time to time; and in 1797 an addition to the quota, called the supplementary militia, was made, to last during the war, but it was soon merged in the regular militia.<sup>5</sup> Under the Act of 1802 the Privy Council were to fix the quota every ten years, guided by the proportion between the number of men liable to serve (as appearing from the lists) and the quota fixed by the Act, and the Crown had power to increase the quota in time of invasion or rebellion. The Acts from 1852 to 1860, reorganising the militia, fixed the total number to be raised, with power to the

<sup>1</sup> 31 Geo. II, c. 28, s. 17. A parish might practically discharge its liability to provide militiamen by paying the fine for non-attendance of a volunteer, which, under 31 Geo. II, c. 28, as stated in the text, was 10*l*. per head; and in 1761 and subsequently, parishes were authorised to give bounties out of the rates to volunteers; this led also to half of the current price of a volunteer being paid out of the rates to a balloted man or a substitute; 2 Geo. III, c. 20, ss. 45, 47; 42 Geo. III, c. 90, ss. 42, 122.

<sup>2</sup> 2 Geo. III, c. 20, s. 120; 18 Geo. III, c. 59, s. 8; 9 Geo. III, c. 76; these provisions were not re-enacted in the consolidation of 1786, but the power was renewed temporarily by 34 Geo. III, c. 15, which developed the volunteers as a separate force. See Clode, *Mil. Forces*, i. 80; and below, para. 126, *et seq.*

<sup>3</sup> Clode, *Mil. Forces*, i. 280-289. Only 797 men were actually raised by ballot, and there were 14,156 substitutes for balloted men. See App. XVII to report of Mr. Stanley's Committee on the Militia, 1876 (*Parliamentary Paper*, 1877 C.—1654).

<sup>4</sup> 17 & 18 Vict., cc. 106, 107.

<sup>5</sup> 37 Geo. III, c. 3, amended by 37 Geo. III, c. 22, and 38 Geo. III, cc. 17, 18, 19, 55; merged in the general militia by 36 Geo. III, c. 106.



Crown to increase it in case of actual invasion or imminent danger thereof.<sup>1</sup> **Ch. IX**

91. The Act of 1871 (re-enacted in the Militia Act, 1882) directed that the numbers of the militia should be such as should from time to time be provided by Parliament,<sup>2</sup> and such provision was in effect made by a vote of the sum required for the pay of a specified number of men, and the application of such sum by the Appropriation Act of each year. The quotas (which were only required in the event of a ballot) were to be fixed by the Privy Council<sup>3</sup>; the last quota was fixed in 1852. **Numbers under Act of 1871.**

92. Under the Act of 1662 militiamen were liable to be called out for training and exercise, and also in the case of invasion, insurrection, or rebellion. **Conditions of service.**

93. In 1757 the service of the militia was placed nearly in the position in which it remained until 1870, that is to say, the force was to be annually trained and exercised for a limited time, while in case of actual invasion or imminent danger thereof, or in case of rebellion, the Crown could order the force, or any part of it, to be drawn out and embodied. The period for the annual training was originally fixed in the Act, but afterwards left to be determined by the Crown; it was not to be less than 21, nor more than 56 days, and the Crown could dispense with it entirely. In 1860 a preliminary training was required from every militiaman on his first entering the force.<sup>4</sup> **Annual training.**

94. The power of embodying the force in cases other than those before mentioned, after having been conferred on the Crown at various times by temporary measures,<sup>5</sup> was ultimately permanently enacted. In 1854 (the Crimean War) the Queen was authorised to embody the militia whenever a state of war existed between Her Majesty and any foreign power<sup>6</sup>; but in 1870 the old provisions were superseded by the enactments authorising the embodiment in case of imminent national danger or great emergency, which were re-enacted in 1882, and remained in force until the repeal of the Militia Acts in 1921.<sup>7</sup> After 1757 the law required that the cause of embodiment should be communicated to Parliament if sitting, or declared in Council and notified by proclamation if Parliament was not sitting, and that, thereupon, Parliament, if adjourned or prorogued, should meet within a limited time, which under the Act of 1882 was 10 days. **Power to Embody.**

95. The militia was liable to serve in any part of the kingdom, but not out of it; and under this rule the English militia were originally not liable to serve in Scotland or Ireland, but later the **Militia liable to serve only in United Kingdom.**

<sup>1</sup> 15 & 16 Vict., c. 50; 17 & 18 Vict., cc. 106, 107; 23 & 24 Vict., c. 94, ss. 20 & 21.

<sup>2</sup> 34 & 35 Vict., c. 86, ss. 6, 7, 9, re-enacted by 45 & 46 Vict., c. 49, s. 3.

<sup>3</sup> 45 & 46 Vict., c. 49, s. 37.

<sup>4</sup> 23 & 24 Vict., c. 4, s. 14; c. 120, s. 19; 34 & 35 Vict., c. 86, s. 8; 45 & 46 Vict., c. 49, s. 14.

<sup>5</sup> In 1776, with a view to the suppression of the rebellion in America, embodiment was authorised, in case of rebellion in Great Britain or any territories or dominions thereunto belonging, by 16 Geo. III, c. 8; in 1815 on "the prospect of a war with France," by 55 Geo. III, c. 77 (see Clode, *Mil. Forces*, I. 48); in 1857 and 1858, on the occasion of the Indian Mutiny, 20 & 21 Vict., c. 82; 21 & 22 Vict., cc. 4, 86.

<sup>6</sup> 17 & 18 Vict., c. 13. As to the effect of this on the men already enlisted, see Clode, *Mil. Forces*, I. 46.

<sup>7</sup> 33 & 34 Vict., c. 68, which did not apply to any man already enlisted, without his consent. The authority in this Act to raise additional militia in case of imminent national danger or great emergency was not re-enacted on the repeal of the Act in 1875, having been rendered unnecessary by the Act of 1871, declaring that the number of the force shall be such as may from time to time be provided by Parliament. The Act of 1882 was 45 & 46 Vict., c. 19, s. 16.

**Ch. IX** militia was required to serve in any part of the United Kingdom.<sup>1</sup> This was first provided in 1811,<sup>2</sup> subject to certain restrictions, and then in 1859<sup>3</sup> without those restrictions, which were entirely repealed by the Act of 1875. In 1859 a power was given to the Sovereign to accept voluntary offers by the militia to serve in the Channel Islands and the Isle of Man; this was extended by the Act of 1875 to service in Malta and Gibraltar; and as so extended was re-enacted in 1882.<sup>4</sup> A further extension to any part of the world was made in 1898. At the same time the Crown was authorised to employ militiamen volunteering to serve for not more than one year, whether an order embodying the militia was in force at the time or not.<sup>5</sup>

**Term of service.**

96. A fixed term of service was first provided in 1757, and was then limited to three years, but afterwards increased to five years in the case of balloted men. In 1873 power was given to enlist volunteer militiamen to serve for any period not exceeding six years, and to re-enlist men for a further period not exceeding six years.<sup>6</sup>

### *Command of Militia.*

**Command of militia. Act of 1661.**

97. The Act of 1661, temporarily legalising the militia under Charles II, referred to the dispute with Charles I as to the command of the militia, first by its title, in which it was described as "An Act declaring the sole right of the militia to be in the king, and for the present ordering and disposing the same"; and also by its preamble, which was expressed as follows: "Forasmuch as within all His Majesty's realmes and dominions the sole supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength is, and by the lawes of England ever was, the undoubted right of His Majesty and his royall predecessors, Kings and Queenes of England, and that both or either of the Houses of Parliament cannot nor ought to pretend to the same, nor can nor lawfully may raise or leavy any warr, offensive or defensive, against His Majesty, his heires, or lawful successors."<sup>7</sup>

<sup>1</sup> 45 & 46 Vict., c. 49, s. 12, re-enacting 38 & 39 Vict., c. 69, s. 49. The oath for balloted men in 51 Geo. III., c. 118, s. 1, and for volunteer militiamen in 38 & 39 Vict., c. 69, s. 31, specified the area of service, but this being inconsistent with the provisions for volunteer service in Gibraltar, Malta, &c., was omitted by 45 & 46 Vict., c. 49, s. 13. After 1757 the English militia were liable to serve in Scotland.

<sup>2</sup> 51 Geo. III., cc. 118, 128; 51 Geo. III., c. 114 (Regiment of Miners); 63 Geo. III., c. 152 (Tower Hamlets); 54 Geo. III., c. 10. See Clode, *Mil. Forces*, i. 801, 302, as to the opposition to the Acts. The principle had been adopted in temporary Acts, as in 1798, when some English regiments volunteered to serve in Ireland, and Acts were passed by the Parliament of Great Britain to enable His Majesty to accept the offer, and by the Parliament of Ireland to provide for the government of the forces so employed (38 Geo. III., c. 66, continued by 39 Geo. III., c. 5; 39 & 40 Geo. III., cc. 9, 15; 38 Geo. III. (I.), c. 46; 39 Geo. III. (I.), c. 64, ss. 13, 14). And again, in 1799 and 1804 and the following years, when some of the Irish regiments volunteered to serve in Great Britain, and Acts were passed to enable His Majesty to accept the offers (39 Geo. III. (I.), c. 31; 44 Geo. III., c. 32, continued by 46 Geo. III., c. 31; 47 Geo. III., sess. 1, c. 6).

<sup>3</sup> 22 & 23 Vict., c. 38, ss. 1, 2.

<sup>4</sup> 22 & 23 Vict., c. 38, s. 4; 38 & 39 Vict., c. 69, s. 50; 45 & 46 Vict., c. 49, s. 12. A similar power had been given temporarily at the time of war in 1813 (54 Geo. III., cc. 1, 17), in 1855 (18 & 19 Vict., c. 1), and in 1858 (21 & 22 Vict., c. 85). In these cases, however, the number was limited to three-fourths of each regiment, though the area of service extended in the first case to Europe, and in the second and third cases to any place out of the United Kingdom.

<sup>5</sup> Reserve Forces and Malta Act, 1898.

<sup>6</sup> 36 & 37 Vict., c. 68, s. 1 (which used the old term "enrol") re-enacted in 1875, 38 & 39 Vict., c. 69, s. 32, and in 1882, 45 & 46 Vict., c. 49, s. 8 (2).

<sup>7</sup> 13 Cha. II., stat. 1, c. 6. This preamble, which in terms goes beyond the title of the Act, and includes forces besides the militia, is still unrepealed. The rest of the Act was repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict., c. 125).

98. The Act of 1662,<sup>1</sup> which reorganised the militia, while recognising by a preamble in identical terms the right of the Crown, practically took it away. It required the king under statutory power to issue Commissions of Lieutenancy for the different counties in England, and conferred on the lieutenants so appointed the chief powers in relation to the militia. They were empowered to commission the officers, raise the men, form the regiments, muster and exercise them, and in case of insurrection or invasion, to lead the forces as well within their counties as in any other counties in England. The result of the chief powers being vested in the lieutenants of counties was that the militia was regarded as a counterpoise of the standing army,<sup>2</sup> and as a constitutional force under the control of Parliament rather than of the Crown, and for this reason was not made subject to military law.<sup>3</sup>

Powers of  
Lords Lieutenants  
under Act  
of 1662.

99. A power was indeed reserved to the king to appoint and remove the officers, and to give directions to the lieutenants as to arraying and dealing with the forces. But the Act of 1757<sup>4</sup> limited this, leaving to the Crown only the power to approve and dismiss deputy lieutenants and to dismiss officers, while the local character of the force was intensified by requiring the lieutenants of counties and deputy lieutenants and officers to be qualified by the possession of landed property in their counties. On the other hand, the king was empowered to place the force, when embodied, but not during the annual training, under the command of a general officer; and had also power to appoint former officers and soldiers of the army to be adjutants and serjeants.

Powers of  
Crown.

100. The command of the militia remained in the same position until 1852, with the exception that ex-officers of the army and navy were permitted to serve without the property qualification. After the revival, however, of the militia in 1852, a change was made. The property qualification of the officers was reduced, and, after a further reduction in 1854, was entirely abolished in 1869, so that the officers ceased to be necessarily connected with the county or with the landed interest.<sup>5</sup> Moreover, by the Act of 1852 and subsequent Acts, much larger powers were conferred on the Crown, both as to the qualifications and training of the officers, and as to other matters concerning the militia<sup>6</sup>; but any detailed notice of these powers is rendered unnecessary by the complete transfer of the powers of the lieutenants of counties to the Crown by the Act of 1871.<sup>7</sup>

Changes in  
1852 and  
subse-  
quently.

<sup>1</sup> 14 Cha. II. c. 3.

<sup>2</sup> Clode, *Mil. Forces*, i. 36, 37.

<sup>3</sup> See exemption from the Mutiny Act, 1 Will. and Mar., c. 5, s. 7. The pay was appropriated by Act of Parliament and not by warrant, and the estimates originated with a Committee of the House of Commons. Moreover, only one month's pay and therefore one month's service could be obtained without coming to Parliament. The preamble to the Act of 1802 laid stress on the force being under the command of officers having landed property.

<sup>4</sup> 30 Geo. II. c. 25.

<sup>5</sup> 15 & 16 Vict., c. 50, ss. 1-4; 17 & 18 Vict., c. 105, s. 31; c. 106, ss. 6-11 (Scotland); c. 107, ss. 5-7 (Ireland); 18 & 19 Vict., c. 100 (which made the qualifications uniform throughout the United Kingdom); 32 & 33 Vict., c. 13.

<sup>6</sup> As to appointment of officers, training and bounties to, and pay of men while not embodied, 15 & 16 Vict., c. 50; 17 & 18 Vict., cc. 13, 105, 106, 107. As to discharge of militiamen, 16 & 17 Vict., c. 13, s. 9; 17 & 18 Vict., c. 105, s. 42; c. 106, s. 61; c. 107, s. 25. As to place and time of training, 22 & 23 Vict., c. 38, s. 8. As to placing the force during training under the command of general officers, and attaching officers of regulars to the force during training, 32 & 33 Vict., c. 13, ss. 1, 2.

<sup>7</sup> 34 & 35 Vict., c. 36, s. 6, repeated in 38 & 39 Vict., c. 69, s. 21, and re-enacted by 45 & 46 Vict., c. 49, ss. 4-6 as to general militia and 3rd sch. as to local militia.

Powers of  
Lord Lieuten-  
ant  
re-vested in  
Crown by  
Act of 1871.

101. In 1871 it was determined to combine the regular and auxiliary forces in one organisation in connection with different territorial districts. In furtherance of this scheme an Act was passed, by which the command of the auxiliary forces with all the powers of the lieutenants of counties and those of the Lord Lieutenant in Ireland in relation to any of such forces (except those relating to the raising of the militia by ballot), were re-vested in the Crown, and declared to be exercisable through a Secretary of State, or any officers to whom Her Majesty, with the advice of a Secretary of State, might delegate such command and powers. The same Act also provided that the officers of the auxiliary forces should hold commissions from Her Majesty in the same manner as the officers of the regular forces; but a limited right of recommending persons for first commissions was reserved to the lieutenants of counties.

Status of  
militia  
officers.

102. Up to 1882 it was provided by statute that militia officers should rank with officers of the regular forces as the youngest of their rank<sup>1</sup>; after that date militia officers were not only commissioned like officers of the regular forces, but were always subject to military law, with power to sit on courts-martial for the trial of offenders belonging to the regular forces, and *vice versa*.<sup>2</sup>

Provisions  
of Act of  
1881.

103. The Army Act, to remove all doubt as to the power of command, declared that Her Majesty might make regulations as to the persons to exercise command over any part of Her forces, including the militia.<sup>3</sup> The Militia Act, 1875, and the Regulation of the Forces Act, 1881 (re-enacted in 1882), also gave Her Majesty complete power to provide for the formation of militiamen into regiments or other military bodies, the formation of them into corps, and the distribution of the men among the corps, and generally for the government of the force.<sup>4</sup>

Militia not  
subject to  
Mutiny Act  
at all till  
1875.

104. The Act of 1662 authorised lieutenants of counties to imprison mutineers and soldiers not doing their duties, and to inflict small fines or twenty days' imprisonment as a punishment; but it was not till 1757 that the force was made, when embodied, subject to the Mutiny Act and Articles of War. Except during embodiment, the men were subject only to civil fines for drunkenness, disobedience, absence, &c. In 1761, however, the Mutiny Act was applied to the militia when out for training as well as when embodied. Men, however, who failed to appear were only liable to a fine till 1786, when they became liable in case of embodiment to be tried for desertion under the Mutiny Act.<sup>5</sup>

Militia  
brought  
more under  
military law  
since 1852.

105. After 1852 the militia was by degrees brought more completely under military law. Thus, in 1854, men who failed to appear at the annual training were declared deserters, and made liable to a fine of 10l.<sup>6</sup> In 1875, militiamen during their preliminary training were made subject to the Mutiny Act by the Mutiny Act of that year, and under a subsequent Act of the same year if

<sup>1</sup> 38 & 39 Vict., c. 69, s. 21. This was provided by the Act of 1757, but omitted from 45 & 46 Vict., c. 49, as rank is a matter for regulation by the Sovereign.

<sup>2</sup> A.A., 50, 175, 178.

<sup>3</sup> A.A. 71.

<sup>4</sup> 38 & 39 Vict., c. 69, s. 86; 44 & 45 Vict., c. 57, s. 4; re-enacted in 45 & 46 Vict., c. 49, s. 54.

<sup>5</sup> 2 Geo. III, c. 20, s. 96; 26 Geo. III, c. 107, s. 96.

<sup>6</sup> 17 & 18 Vict., c. 103, s. 45; c. 106, s. 53; c. 107, s. 28.

they failed to appear at the preliminary training were made triable as deserters.<sup>1</sup> Militia officers were made at all times subject to military law by the Mutiny Act of 1877.<sup>2</sup> The old exemption of militiamen from capital punishment during annual training was omitted from the later Acts as unnecessary, because desertion and suchlike military offences are not capitally punishable, except on active service.<sup>3</sup>

Ch. IX

*Expense of Militia and Supplemental Provisions.*

106. The expense of the militia was in 1662 divided between individuals (owners of property), counties, and parishes on the one hand, and the Crown on the other; the former provided equipments, horses, ammunition, &c., and pay for the annual training, while the Crown supplied pay in case of embodiment.<sup>4</sup>

Payment of expenses of militia.

107. In 1757 a different principle was adopted, and a separate Act was passed authorising the issue from the Exchequer and application of a sum for the pay, clothing, and expenses of the militia, and this Act was continued annually till 1874. The passing of this Act, for long merely a formal matter, became entirely meaningless after the militia were placed under the command of the Crown in 1871, and it was accordingly provided in 1874 that the pay and clothing of the militia should be regulated by Royal Warrant, orders and regulations in the same manner as the pay and clothing of the regular forces.<sup>5</sup>

Act of 1757.

108. The storage of the arms, clothing, and equipments of the militia was in 1757 made a charge on the parishes; but in 1786 was transferred to the counties; and provision was then made for the permanent staff residing on the spot and taking care of the arms. After the change of system in 1871,<sup>6</sup> the counties were relieved from this, as well as other charges connected with the militia, and by Acts passed in 1872 and 1873 provision was made for the purchase of lands and the erection of barracks at the public expense, and the counties were authorised to transfer their storehouses to the Crown, or to sell them.<sup>7</sup> Although the authority for raising militia under the Militia Acts was repealed in 1921, the portions of the Acts relating to existing storehouses were left unrepealed.

Storage of arms, &c., a local charge till 1871.

109. From 1757 onwards the officers and men were allowed during the annual training and during embodiment to be billeted like the regular forces, and the permanent staff might be billeted at all times.

Billeting.

<sup>1</sup> 38 & 39 Vict., c. 7, s. 2: 38 & 39 Vict., c. 69, s. 59.

<sup>2</sup> 40 & 41 Vict., c. 7, s. 2.

<sup>3</sup> At one time militia deserters might be sentenced to serve in the regular forces, 39 Geo. III, c. 108; 49 Geo. III, c. 90, s. 127, repealed in 1875; and 43 Geo. III, c. 50, s. 5, only repealed in 1882.

<sup>4</sup> Individuals were liable to advance one month's pay; and the Act provided that until this month's advance was repaid no further advance was to be required. This led to a difficulty in calling out the militia, which was removed by a temporary Act, 2 Will. & Mar., sess. 2, c. 12, re-enacted almost annually during the reigns of Will. & Mar. and Anne. Similar provisions were again made in 1716, 1 Geo. I, stat. 2, c. 14, revived in 1723, 9 Geo. I, c. 8, s. 6, and again in 1733, 7 Geo. II, c. 23, and in 1745, 19 Geo. II, c. 2. The money raised by the county was known as "trophy money."

<sup>5</sup> 37 & 38 Vict., c. 29. See also 38 & 39 Vict., c. 69, s. 88. The then existing Acts were 31 & 32 Vict., c. 76; 32 & 33 Vict., c. 66; and 36 & 37 Vict., c. 84, which had been annually continued by the Expiring Laws Continuance Act, and were to have effect as a Royal Warrant until a new Warrant was made.

<sup>6</sup> By 34 & 35 Vict., c. 66.

<sup>7</sup> 35 & 36 Vict., c. 68; 36 & 37 Vict., c. 68, s. 8; 36 & 37 Vict., c. 84.

Relief of  
families of  
militiamen.

110. Various enactments were made for relieving out of the poor rates families of militiamen when embodied or out for training; but this system, on the reform of the Poor Law in 1834, was abolished by the Poor Law Amendment Act of that year.<sup>1</sup>

Enlistment  
of militia-  
men into  
the army.

111. When every parish was obliged to raise a certain number of militiamen, the discharge of a militiaman or his enlistment into the army necessarily threw on the parish the burden of providing another man. The power of discharge was therefore jealously watched, and the enlistment of a militiaman into the army was either prohibited, or very much restricted. At the same time individuals desirous to find substitutes, and parishes desirous to avoid a ballot, although forbidden to enlist men by beat of drum, competed for recruits with the recruiting officers of the regular army, and thus in time of war the bounty for recruits was raised to a very high sum.<sup>2</sup>

Act of 1795.

112. In 1795 a change of policy took place, and subject to certain limitations, the enlistment of militiamen in the army was encouraged; and, in order to replace militiamen so enlisting, militia officers were authorised to enlist men by beat of drum.<sup>3</sup>

Acts of 1852  
and 1854.

113. Long after this, however, and even after the change of system in 1852, the old prohibition against the enlistment of militiamen in the army remained in force, although with a voluntarily enlisted militia the reason had disappeared. On the breaking out of war in 1854 prosecutions were instituted against militiamen who had enlisted in the army, and legislation was required to enable the Secretary at War to relieve from punishment the men who had so enlisted.<sup>4</sup>

Act of 1875.

114. Further legislation authorised enlistment in the army; and by the Act of 1875 the enlistment of volunteer militiamen in the army was, as well as their discharge from the militia, placed entirely under the direction of the Secretary of State for War.<sup>5</sup>

### Local Militia.

Acts for  
raising  
forces to  
meet appre-  
hended  
French  
invasion,  
1796-1812.

115. At the end of the eighteenth and beginning of the last century various Acts were passed for raising forces to resist the threatened French invasion, which were based on the liability of every man to aid in the defence of the realm, either by personal service or by contributions.<sup>6</sup>

<sup>1</sup> Sec 43 Geo. III, c. 47, which consolidated the old enactments, and was repealed by 4 & 5 Will. IV, c. 76, s. 60, and by 38 & 39 Vict., c. 69, s. 88.

<sup>2</sup> The ballot had thus a bad effect on enlistment for the army. See Clode, *Mil. Forces* i. 289.

<sup>3</sup> In 1795, 35 Geo. III, c. 83. Such enlistment was also authorised by the Acts relating to the supplementary militia, 39 Geo. III, c. 106; 39 & 40 Geo. III, c. 1. The Consolidation Act of 1802 (42 Geo. III, c. 90) prohibited the enlistment, but authority to enlist men was given by a series of Acts from 1805 to 1813. 45 Geo. III, c. 31; 46 Geo. III, c. 124; 47 Geo. III, sess. 2, c. 57; 48 Geo. III, c. 84; 49 Geo. III, c. 4; 49 Geo. III, c. 53, s. 32; 51 Geo. III, cc. 20, 30; 53 Geo. III, c. 81; 54 Geo. III, cc. 1, 38.

<sup>4</sup> 17 & 18 Vict., c. 105, s. 42; c. 106, s. 61; c. 107, s. 25.

<sup>5</sup> 23 & 24 Vict., c. 94, s. 17; 38 & 39 Vict., c. 69, ss. 75, 76.

<sup>6</sup> 37 Geo. III, cc. 4, 24, and as to Scotland, cc. 5, 30. In 1797 a force of provisional cavalry was to be raised as an augmentation to the militia under 37 Geo. III, cc. 6, 23, 120; 38 Geo. III, cc. 51, 94; 39 Geo. III, c. 23. As to returns of men, provisions, &c., 38 Geo. III, c. 27; 43 Geo. III, c. 55. An army of reserve was provided by 43 Geo. III, cc. 82, 100, 123, and 44 Geo. III, c. 58; and as to Scotland, 43 Geo. III, cc. 83, 124; 44 Geo. III, c. 66; and as to Ireland, 43 Geo. III, c. 85; 44 Geo. III, c. 74; and as to the City of London, 43 Geo. III, c. 101; 44 Geo. III, c. 86; the first of which recites that the City, notwithstanding their exemption from the liability to provide men for military service, have offered to raise the force mentioned in the Act. A levy on masses was provided for by 43 Geo. III, c. 96, amended

116. They were superseded in 1808 by Acts establishing a local militia in England and Scotland. These Acts were amended in the following years,<sup>1</sup> and were finally consolidated in 1812.<sup>2</sup>

Acts establishing local militia.

117. The local militia was in effect the old general levy, as the Acts provided for the raising of a force in each county by ballot, in the same manner as under the general Militia Acts, from among men between the ages of 18 and 30. The number in each county, including any effective yeomanry and volunteers in the county, was to be equal to six times the quota fixed for the regular militia of the county, but after 1871 was to consist of such number of men as might from time to time be provided by Parliament.<sup>3</sup> A man when drawn in the ballot had to serve for four years without any power to find a substitute, and without receiving any bounty. With some exceptions (such as men with previous service, or men with more than two children) there were no exemptions from liability to serve. Parishes could provide volunteers and pay them bounties out of the rates. The counties were liable to an annual fine of 15*l.* for each man short of the quota.

Account of local militia.

118. The force was to be annually trained, and could be called out for the suppression of riots, and preliminary training could be required. The force could be embodied in case of invasion or the appearance of an enemy on the coast, and in case of rebellion; Parliament was to meet within fourteen days after the order for embodiment.<sup>4</sup> As regards command, officers, and discipline, the local militia was almost precisely in the same position as the general militia,<sup>5</sup> and the force whenever called out was subject to military law. The property qualification of officers was abolished by 32 and 33 Vict., c. 13. The expenses were to be paid by the Crown, and the storage of arms, which was formerly a county charge, was later also borne by the Crown.<sup>6</sup>

Training, command, and embodiment.

119. The force was actually raised by ballot and called out for annual training until the peace of 1815.<sup>7</sup> In 1813 parts of the local militia were authorised to volunteer for service out of their counties with the object of guarding French prisoners.<sup>8</sup> After that peace the King in Council was authorised<sup>9</sup> to suspend the ballot for and enrolment of the local militia, and the force was never raised again. Orders in Council were made annually under the Act up to the year 1832,<sup>10</sup> when they seem to have

Not raised after 1815.

by c. 120. The first Act recites that it is expedient "to enable His Majesty more effectually to exercise his ancient and undoubted prerogative of requiring the military service of all his liege subjects in case of an invasion of the realm by a foreign enemy," extended to the City of London by 43 Geo. III, c. 125. The foregoing Acts were repealed in 1806 by 46 Geo. III, cc. 51, 63, 90, 144; and the Training Act (46 Geo. III, c. 90) was passed, which was only repealed in 1872 by the Statute Law Revision Act (35 & 36 Vict., c. 63), but was never put in force.

<sup>1</sup> 48 Geo. III, c. 111; and as to Scotland, c. 150; amended by 49 Geo. III, cc. 40, 48, 82, 129, and 50 Geo. III, c. 25. See Clode, *Mil. Forces*, i. 325-332.

<sup>2</sup> 52 Geo. III, c. 38; and as to Scotland, c. 68. See also the Amendment Acts, 52 Geo. III, c. 116; 53 Geo. III, cc. 28, 29, and 45 & 46 Vict., c. 49, 3rd sched.

<sup>3</sup> 34 & 35 Vict., c. 86, ss. 7, 8, 19, re-enacted by 45 & 46 Vict., c. 49, 3rd sched.

<sup>4</sup> The Act of 1870 (33 & 34 Vict., c. 68), which allowed the militia to be embodied in case of imminent national danger or great emergency, was repealed by 38 & 39 Vict., c. 69, as if it had not applied to the local militia.

<sup>5</sup> See above, para. 97, *sup.*, and Militia Act, 1882 (45 & 46 Vict. c. 49, 3rd sched.). The Army Act applied to the local as well as to the general militia until 1921.

<sup>6</sup> It appears to have been transferred to the Crown, as in the case of the general militia, by 35 & 36 Vict., c. 68.

<sup>7</sup> Annual training is mentioned in the Annual Register, 1811, p. 32.

<sup>8</sup> 54 Geo. III, c. 19; Annual Register, 1813, p. 205.

<sup>9</sup> By 36 Geo. III, c. 38.

<sup>10</sup> Clode, *Mil. Forces*, i. 333, in which 1836 appears to be a misprint for 1832.

**Ch. IX** — been discontinued, and the Act authorising the suspension was repealed as obsolete in 1873.<sup>1</sup> In 1921 the Acts which still remained in force regarding the local militia were repealed, together with those concerning the general militia.

*Militia in Scotland and Ireland.*

Militia of  
Scotland  
before and  
under Act of  
1802.

**120.** The early Acts above mentioned relate only to the militia of England. The militia of Scotland was not organised by an Act of the Parliament of Great Britain until 1797, though before that time corps of Fencibles were raised and embodied.<sup>2</sup> In that year an Act was passed,<sup>3</sup> which, as subsequently amended,<sup>4</sup> provided for raising a force of militia during the war, by ballot among men between the ages of 19 and 30. In 1802 these Acts were replaced by an Act<sup>5</sup> providing for the organisation of the militia on a basis similar to that on which the militia of England was organised by the Consolidation Act passed in that year.<sup>6</sup>

Militia of  
Ireland.  
First Act.

**121.** The militia of Ireland was first organised in 1715,<sup>7</sup> when His Majesty and the Chief Governor were empowered to issue to Protestants commissions of lieutenancy and array for counties and cities, empowering them to arm and train all protestants between the ages of 16 and 60, who were bound to appear or find substitutes; and in case of insurrection, rebellion, or invasion to serve in any part of the Kingdom. His Majesty and the Chief Governor were empowered to commission officers and approve of deputy lieutenants, but the command of the force was vested in the lieutenants of counties. Mutiny, non-appearance, and neglect of duty were punishable by fine or imprisonment, and the force was not made subject to military law.

Amending  
Acts.

**122.** The Act of 1715 was amended in 1719<sup>8</sup> and again in 1745<sup>9</sup> and, as so amended, was continued from time to time until 1777, when it was replaced by an Act<sup>10</sup> which seems to have contemplated the raising of men by ballot, though in point of fact it made no provision for raising men otherwise than by voluntary enlistment, and did not fix any term of service. This Act, being found insufficient, was repealed in 1793 and replaced by an Act<sup>11</sup> which provided for raising a force of militia according to quotas fixed in the Act, by ballot among men between the ages of 18 and 45, to serve for four years. Governors of counties were authorised to array and train the force, and to appoint deputies, subject to the approval of the Lord Lieutenant; and His Majesty was empowered to appoint a commandant for each county, who was authorised to appoint officers, having property qualifications, subject to the approval of the Lord Lieutenant. The force might be embodied in case of invasion, &c., and was, during training and

<sup>1</sup> By the Statute Law Revision Act, s. 73, (36 & 37 Vict., c. 91).

<sup>2</sup> See preamble to 18 Geo. III, c. 58, s. 4.

<sup>3</sup> 37 Geo. III, c. 103.

<sup>4</sup> 38 Geo. III, cc. 12, 44; 39 Geo. III, c. 62; 41 Geo. III (U.K.), c. 67.

<sup>5</sup> 42 Geo. III, c. 91.

<sup>6</sup> 42 Geo. III, c. 90.

<sup>7</sup> 2 Geo. I (I), c. 9.

<sup>8</sup> 6 Geo. I (I), c. 3.

<sup>9</sup> 19 Geo. II (I), c. 9.

<sup>10</sup> 17 & 18 Geo. III, (I), c. 13.

<sup>11</sup> 39 Geo. III (I), c. 22.



embodiment, subject to the Mutiny Act. The raising of the force was made compulsory by clauses imposing a fine of 5*l.* a year on each county for each man deficient, and enlistment in the army was prohibited. This Act of 1793 was amended in 1795,<sup>1</sup> and again in every succeeding year till the Union of Ireland with Great Britain in 1801. Ch. IX  
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123. For some years after the Union the force continued to be raised and governed under the ante-Union Acts, as amended by several Acts passed by the Parliament of the United Kingdom,<sup>2</sup> which encouraged voluntary enlistment by means of bounties to be advanced by the Treasury and repaid by the counties. Finally, all the Acts were consolidated in 1809 by an Act<sup>3</sup> which fixed the establishment of each regiment, and provided for raising the men by means of ballot, but gave power to the Lord Lieutenant to authorise the raising of men by voluntary enlistment by means of bounties advanced by the Treasury and repaid by the counties, and also to suspend the raising of any regiment. The Acts since 1852 have been noticed before. Acts after  
Union.

#### *Legislation of 1907 and 1921.*

124. Under the reorganisation of the forces which took place in 1908 consequent upon the passing of the Territorial and Reserve Forces Act, 1907, the militia (as authorised by the Militia Acts) ceased to be raised in the United Kingdom. The greater number of the existing battalions were in 1908 converted into units of the Special Reserve and the remainder were disbanded. Legislation  
of 1907 as to  
militia.

125. The Territorial Army and Militia Act of 1921<sup>4</sup> repealed all the Acts relating to the militia (both general and local), except the portions relating to existing militia storehouses, lieutenancy matters and the City of London trophy tax. Repeal of  
Militia Acts.

Under the same enactment the title of the Special Reserve (a portion of the Army Reserve raised under the Territorial and Reserve Forces Act, 1907<sup>5</sup>) was altered to "militia."<sup>6</sup>

### 4. YEOMANRY AND VOLUNTEERS.

#### *General Sketch of History.*

126. It has been mentioned before that volunteers were accepted in aid of the ballot for the militia, first as individuals, and then as separate companies, but these separate companies formed, in fact, part of the militia.<sup>7</sup> Besides the above, volunteer corps were raised independently of any Act; some of them were known as Fencibles, and were chiefly raised in Scotland. Enactments were passed, however, to prevent the officers vacating their seats in Parliament by the acceptance of commissions, and to regulate their rank with officers of the militia.<sup>8</sup> Early  
volunteer  
corps.

<sup>1</sup> 35 Geo. III (I), c. 8.

<sup>2</sup> 41 Geo. III (U.K.), c. 6; 42 Geo. III, c. 100; 43 Geo. III, cc. 2, 38.

<sup>3</sup> 40 Geo. III, c. 120.

<sup>4</sup> 11 & 12 Geo. V, c. 37.

<sup>5</sup> 7 Edw. VII, c. 9, Pt. III.

<sup>6</sup> This "militia" is of course entirely different, and must be carefully distinguished, from the militia of which an account has been given in the preceding paragraphs.

<sup>7</sup> See 18 Geo. III, c. 59; 19 Geo. III, c. 78; 34 Geo. III, c. 16.

<sup>8</sup> 18 Geo. III, c. 59; 35 Geo. III, c. 83, s. 10.

Acts of 1794  
and 1802.

127. In 1794 an Act was passed to provide that any corps of volunteers which had been raised by officers commissioned by the King, or the lieutenant of the county, or by other persons authorised by the King, and which in case of invasion or of riot should assemble and march, should receive the same pay as the regular forces, and be subject to military discipline; such volunteers were to be exempted from liability to serve in the militia.<sup>1</sup> These corps, it will be observed, were distinct from the militia. This Act expired at the peace of Amiens; but in 1802 another Act was passed authorising the raising of yeomanry and volunteer corps.<sup>2</sup> The eagerness to volunteer and the energy with which military preparations were taken up throughout the country for the purpose of resisting the threatened invasion of the French under Napoleon are well known, and upwards of 400,000 men were enrolled.<sup>3</sup> The men so enrolled were exempted not only from the regular militia, but also from the other forces which, as before mentioned, were organised at this period,<sup>4</sup> and the allegation was made that by reason of this exemption the volunteers were a disadvantage as interfering with the efficiency of the other forces.

Act of 1804.

128. In 1804 an Act was passed in the face of considerable opposition for consolidating and amending the Acts relating to the yeomanry and volunteers, and this was the Act under which, as amended by subsequent Acts, the yeomanry in Great Britain were raised and served down to 1901.<sup>5</sup>

Position of  
yeomanry  
up to 1901.

129. Before the Act of 1901, mentioned in paragraph 130, came into operation, the yeomanry of Great Britain were in fact volunteer cavalry, and consisted of corps whose services had been offered to and accepted by the Sovereign, whether under the law existing before the Act of 1804,<sup>6</sup> or subsequently under the powers conferred by that Act.

The number of the yeomanry was unlimited and enlistment voluntary. They did not rank as effective unless trained for a certain number of days in each year. Originally, under the Act of 1804, they were liable in case of invasion, or the appearance of any enemy in force on the coast of Great Britain to assemble for military service in any part of Great Britain; but under the National Defence Act, 1888,<sup>7</sup> they were made liable to be called out for actual military service in any part of Great Britain whenever an order embodying the militia was in force, and the existing machinery for embodying and disembodying the militia was applied to the yeomanry. They were also able, under certain circumstances, to assemble voluntarily for improvement in military exercise, or to act for the suppression of riots.<sup>8</sup> Under an Act of 1884,<sup>9</sup> orders and regulations could be made as to the pay and pensions

<sup>1</sup> 34 Geo. III, c. 31; 38 Geo. III, cc. 27, 51.

<sup>2</sup> 42 Geo. III, c. 66, amended by 43 Geo. III, c. 121; 44 Geo. III, c. 18.

<sup>3</sup> Stanhope's Life of Pitt, iv. 77, ch. xxxvi; Clode, Mil. Forces, i. 313, 314.

<sup>4</sup> See above, para 115. As to the relation of these volunteers to the other forces, see Clode, Mil. Forces, i. 312.

<sup>5</sup> 44 Geo. III, c. 54, amended by 46 Geo. III, cc. 125, 140; 58 Geo. III, c. 39; 57 Geo. III, cc. 41, 44; 7 Geo. IV, c. 58; 51 & 52 Vict., c. 31, s. 2. The Act of 1814 was repealed as to volunteers in Great Britain by the Volunteer Act of 1863.

<sup>6</sup> 44 Geo. III, c. 54, s. 3.

<sup>7</sup> 51 & 52 Vict., c. 31.

<sup>8</sup> 44 Geo. III, c. 54, ss. 5, 22, 23 & 46; 56 Geo. III, c. 39.

<sup>9</sup> 47 & 48 Vict., c. 55, s. 2.

of the yeomanry. Unlike the volunteers, the yeomanry were, even before 1901, subject to military law when being trained or exercised alone. Ch. IX  
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The Act of 1804 did not apply to Ireland, but provision was made for the formation of a yeomanry corps in that country by an Act of 1802.<sup>1</sup> This Act differed from the English Act in providing for a yeomanry on a different footing to the yeomanry of Great Britain, and consisting of troops voluntarily enrolled for the protection of property and the preservation of peace in their locality, and not liable to be called out compulsorily.

The position of the yeomanry under the old system, as regards subjection to military law, was as follows:—If a corps of yeomanry was called out on actual military service, or was being trained or exercised, whether it had been called out or assembled voluntarily, and whether it was serving alone or with any portion of the regular forces or of the militia when subject to military law, every member of that corps was subject to military law. Individual members of a corps of yeomanry were also subject to military law when they were attached to or acting with any regular forces, or when they were serving in aid of the civil power.<sup>2</sup>

130. But, under an Act of 1901,<sup>3</sup> the previous character of the yeomanry as a body of volunteer cavalry was radically changed, and the position of members of the yeomanry was in the main assimilated to that of members of the general militia. The Act of 1901 applied only to members of the yeomanry receiving commissions or enlisting after the 16th August, 1901; and in order to quiet certain doubts which had arisen, an Act of the following year expressly applied to the yeomanry sections three and four of the Militia Act, 1882, relating to maintenance and government.<sup>4</sup> These two Acts applied to Ireland equally with the rest of the United Kingdom, with the result that a force of yeomanry could be raised in Ireland on the same footing as that in Great Britain; and two regiments of yeomanry were raised in Ireland. Position of  
yeomanry  
after 1901.

The power of the Crown to raise yeomanry does not appear to have been subject to any restriction as to numbers.

131. After the peace of 1814 the foot volunteers fell almost entirely into abeyance; but in 1859, in consequence of a panic respecting the hostile tone of the French army and government and the defenceless state of the country, they were revived, chiefly as rifle volunteers, but partly as light horse, artillery, and engineers, with the addition later of army service corps and medical volunteer units. The old Act was soon found unsuitable for the organisation of the new force, and was replaced by an Act of 1863, which was again amended in 1869, 1881, 1895, 1897 and 1900.<sup>5</sup> Revival of  
volunteers  
in 1859.

<sup>1</sup> 42 Geo. III, c. 68.

<sup>2</sup> A. A. (1921 reprint), s. 176 (7); 44 Geo. III, c. 54, ss. 22, 23.

<sup>3</sup> 1 Edw. VII, c. 14.

<sup>4</sup> 2 Edw. VII, c. 30.

<sup>5</sup> The 1st Middlesex and 1st Devonshire rifle volunteers existed some years before 1859. The Honourable Artillery Company also never ceased to exist. The Act of 1863 is 26 & 27 Vict., c. 65; of 1869, 32 & 33 Vict., c. 81; of 1881, 44 & 45 Vict., c. 57; of 1895, 58 & 59 Vict., c. 23; of 1897, 60 & 61 Vict., c. 47; of 1900, 63 & 64 Vict., c. 30.

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*Legislation of 1907, 1916 and 1921.*

Legislation  
of 1907 as to  
volunteers,  
and repeal of  
Yeomanry  
Acts.

132. Under the reorganisation of 1908 consequent upon the passing of the Territorial and Reserve Forces Act, 1907,<sup>1</sup> the yeomanry ceased to be raised as such, and the existing yeomanry units were transferred to the Territorial Force, with the exception of the two Irish regiments, which were disbanded and reformed into Special Reserve units. The yeomanry, however, though absorbed into the Territorial Force, retained their old title, *i.e.*, continued to be known as "Yeomanry." The Yeomanry Acts were finally repealed in 1921.<sup>2</sup>

The existing units of volunteers were at the same time transferred to the Territorial Force.

The  
Volunteer  
Force during  
the  
Great War.

133. A volunteer force was raised during the Great War for home defence. From 1914 to 1916 a body termed Volunteer Training Corps was raised and administered privately with the recognition of the War Office, but in 1916 the War Office authorised the raising of volunteer units under the Act of 1863, and the existing corps thereafter came under the control of the War Office. A new Act<sup>3</sup> was passed in 1916 which gave effect to agreements on the part of members of the force to undergo training or to perform military duties (or both), and rendered such members subject to military law. From May, 1918, men granted exemption certificates under the Military Service Acts were liable to serve in the volunteer force as a condition of exemption from compulsory service in the army.<sup>4</sup>

The force, which consisted of artillery, engineers, infantry, army service corps and medical personnel, was disbanded at the end of the war. The Act of 1916 expired in 1921, but the Acts of 1863 to 1900 still remain in force.

## 5. THE TERRITORIAL ARMY.

*General Sketch of History.*

Creation of  
the  
Territorial  
Force.

134. The Territorial Force was created in April, 1908, under the authority of the Territorial and Reserve Forces Act, 1907,<sup>5</sup> which enacts that the force shall consist of such numbers as may from time to time be provided by Parliament. In 1921, the designation of the force was altered to Territorial Army.

County  
Associations.

135. County Associations were established under the Act of 1907 to raise and administer (but not to command) the force.<sup>6</sup> The Auxiliary Air Force and Air Force Reserve Act, 1924,<sup>7</sup> modified the Act of 1907, and permits, *inter alia*, the formation of County Joint Associations to perform the duties of Associations under the Act of 1907, both as regards the Territorial Army and the Auxiliary Air Force.

<sup>1</sup> 7 Edw. VII, c. 9.

<sup>2</sup> 11 & 12 Geo. V, c. 37.

<sup>3</sup> 6 & 7 Geo. V, c. 82.

<sup>4</sup> See 8 Geo. V, c. 5, s. 4 (6).

<sup>5</sup> 7 Edw. VII, c. 9.

<sup>6</sup> See para. 48 of Chap. XI and T. R. F. Act, 1907, ss. 1-6.

<sup>7</sup> 14 & 15 Geo. V, c. 15.

136. The original Territorial Force was intended for home service only, but although the Act of 1907<sup>1</sup> stipulates that the force shall not be ordered to go out of the United Kingdom, it provides that members may offer to serve in any place outside the United Kingdom.

Area of service of Territorial Force.

137. During the Great War nearly all of the units of the Territorial Force volunteered for service overseas, and under the Military Service Act, 1916,<sup>2</sup> any individual members of the force who had not accepted the Imperial service obligation, automatically became army reservists.

Force employed abroad during the Great War.

138. In 1920 the force was reorganised, and since then only members who are willing to accept the liability to serve overseas are accepted. It is, however, provided in the Imperial service agreement that, before the agreement becomes effective, an Act of Parliament authorising the despatch of the Territorial Army overseas must be passed.<sup>3</sup>

Area of service of Territorial Army.

## 6. BILLETING, IMPRESSMENT OF CARRIAGES, &C.

### *Billeting.*

139. The practice of billeting has at times been of great importance in English history.

Billeting.

In early times troops were quartered under an order from the king, or some officer authorised by him, such as the High Harbinger, directed to the civil magistrate of the district, requiring him to provide quarters and provisions. This right to quarter was probably connected with the right of purveyance, and as the need of quartering only arose in time of war, the exercise of the right could not be complained of by those who were liable to serve in person or provide soldiers, arms, and provisions.<sup>4</sup>

Billeting in early times.

140. But, like the right of purveyance, the right to quarter was no doubt abused and led to oppression; and when it came to be enforced to provide quarters for soldiers returning from the wars and without employment, or (as in the reign of Charles I) to punish towns which had displeased the Court by returning unacceptable candidates to Parliament or otherwise,<sup>5</sup> the abuse became intolerable, and billeting was consequently declared to be illegal by the Petition of Right.<sup>6</sup>

Abuse of the practice, and declaration of illegality thereof by Petition of Right.

141. The practice nevertheless continued, though not without remonstrance, during the reign of Charles II,<sup>7</sup> until 1679, when it was again declared to be illegal by an Act in which Parliament provided money for disbanding the troops, and, on condition of the disbandment, granted an indemnity for past illegal quarterings. This declaration of illegality, as well as that in the Petition of Right, is still in force.<sup>8</sup>

Billeting under Charles II.

<sup>1</sup> S. 13.

<sup>2</sup> 5 & 6 Geo. V, c. 104, sched. 1.

<sup>3</sup> For details as to the constitution and conditions of embodiment of the T. A., see Chap. XI.  
<sup>4</sup> Scott's British Army, ii. 451, and Commissions in Rymer. The word "billet" is a diminution of "bill," a note, and is not derived from "bil," Latin *billus*, a stick used by slaves, nor from its derivative "billet," a wedge of gold or a log of wood, the size of which was fixed by the Acts 27 Edw. III, stat. 2, c. 14, and 43 Eliz., c. 14, to be 3 ft. 4 in. by 7½ in. (Wedgwood's Etym. Dict.). The French word is derived from the English (*Littre*). The word in relation to the quartering of troops is used by Shakespeare, *Othello*, Act II, Sc. 3.

<sup>5</sup> See Forster's Life of Sir John Eliot, ii. 57, 96, 378, note.

<sup>6</sup> 3 Cha. I, c. 1.

<sup>7</sup> Clode, *Mil. Forces*, i. 80, 81.

<sup>8</sup> 31 Cha. II, c. 1.

Billeting  
under  
James II.

142. James II, however, again violated the law, and issued orders for billeting,<sup>1</sup> which gave rise to one of the complaints against him mentioned in the Bill of Rights,<sup>2</sup> after which the practice of billeting, except under statutory authority, was discontinued. The prevalence of the practice of billeting in the reigns of Charles II and James II arose from the necessity of providing quarters for the troops they maintained in time of peace; and the complaints of the illegality of the practice were intensified by those troops being maintained without the consent of Parliament.

Billeting  
first author-  
ised by  
Parliament  
in Mutiny  
Act, 1689.

143. When a standing army was, as before mentioned, authorised by Parliament after the Revolution, it became necessary to make legal provision for the accommodation of the army, as the barrack accommodation was insufficient, and accordingly, in the year 1689, the second Mutiny Act<sup>3</sup> authorised billeting. That Act, while affirming the illegality of billeting, as declared by the Petition of Right and the Act of Charles II, recited that there was "occasion for the marching of many regiments, troops, and companies in several parts of this kingdom towards the sea-coasts and otherwise," and empowered the constables and other chief officers and magistrates of cities, boroughs, towns, and villages, and other places, and no others, to quarter and billet officers and soldiers in "inns, livery stables, alehouses, victualling houses, and all houses selling brandy, strong waters, cyder, or metheglin, by retails, to be drank in their houses, and noe other, and in noe private houses whatsoever."

Billeting  
under Army  
Act.

144. The power thus conferred was subsequently re-enacted in every Mutiny Act, and was embodied in Part III of the Army Discipline and Regulation Act, 1879, now replaced by Part III of the Army Act. As the Army Act is only in operation by virtue of an Act passed annually, billeting continues illegal except to the extent expressly allowed by the Army Act, and so long only as that Act is kept in operation.<sup>4</sup> The Army and Air Force (Annual) Act specifies the prices to be paid for billeting.

Billeting  
illegal  
except so  
far as  
expressly  
authorised.

145. The recital above quoted indicated that billeting was to be only of troops on the march, and the doubt which hence arose as to the power to billet the guards in Westminster led to the insertion in the Mutiny Act of 1707 of a special enactment, authorising them to be so billeted. This enactment was annually re-enacted until 1879.<sup>5</sup> In other parts of the country, however, troops were frequently billeted after they had arrived at their destination, under colour of a presumption that they were still on the march, and that the route authorising them to be billeted was still in force.

Billeting in  
private  
houses  
illegal.

146. From the time when billeting was first authorised by the Mutiny Act down to the year 1909, when important changes were made (*see* para. 152), no alteration in principle, and but little in detail, was made in the law as regards England. That law never allowed billeting in private houses, though before the Revolution both Charles II and James II issued orders for such billeting.<sup>6</sup>

<sup>1</sup> Clode, *Mil. Forces*, i. 57, 61, and App. xii.

<sup>2</sup> 1 Will. & Mar., sess. 2, c. 2.

<sup>3</sup> 1 Will. & Mar., sess. 2, c. 4.

<sup>4</sup> The Acts prohibiting billeting were suspended in express terms by the Mutiny Acts; they are now suspended in general terms by A. A. 102.

<sup>5</sup> Clode, *Mil. Forces*, i. 232, 238.

<sup>6</sup> Clode, *Mil. Forces*, i. 57, 61, 81, and App. xii.

147. As regards Scotland, billeting was regulated by a number of Acts passed before the Union with England, which, while prohibiting free quartering, contained no definition of the houses liable to billets, so that private houses were not exempt. At the time of the Union, in 1708, the Mutiny Act was extended to Scotland, and a provision was inserted<sup>1</sup> allowing officers and soldiers to be quartered in such and the like places and houses as they might have been quartered in by the laws in force at the time of the Union.

Billeting in Scotland.

This provision was annually re-enacted until 1857, when the provisions as to billeting in Scotland were assimilated to those in England.<sup>2</sup>

148. As regards Ireland, billeting was regulated by Acts passed before the Union with Great Britain, which allowed billeting in public houses (described in much the same terms as in England), and "where there shall not be found sufficient room in such houses, then in such manner as has heretofore been customary." After the Union the law remained the same, the provisions of the Irish Acts being at first continued by, and afterwards re-enacted in, the Mutiny Act until the year 1879, when the words allowing billeting in private houses were omitted from the Army Discipline and Regulation Act, and billeting was placed on the same footing throughout the United Kingdom.<sup>3</sup>

Billeting in Ireland.

149. Although billeting was oppressive and generally unpopular as well as detrimental to the soldier,<sup>4</sup> yet down to the end of the eighteenth century the opponents of a standing army objected to the building of barracks on the ground that it facilitated the maintenance of the army to the danger of the constitution and to the oppression of the people,<sup>5</sup> and so long as these objections prevailed, billeting was a necessity. In 1792, however, steps were taken for providing sufficient accommodation for the troops,<sup>6</sup> and during the nineteenth century barracks were gradually built, so that billeting is now hardly ever resorted to for the regular forces, except when actually moving, and modern methods of transport have greatly diminished its necessity even on those occasions.

Necessity of billeting while barrack accommodation insufficient;

150. A check has always existed on the arbitrary exercise of the power of billeting, the power having been entrusted to civil authorities, namely, the constable in the first instance, or in his default the justices; and these authorities have been held liable to pay damages to persons on whom they billet soldiers improperly.<sup>7</sup>

Checks on abuse of practice.

151. Moreover, it was always assumed that troops can only be moved by authority of a route signed on behalf of the Crown.<sup>8</sup> These routes have always been signed by some civil officer, and it

Routes, authority for billeting.

<sup>1</sup> 7 Ann. c. 4, s. 22.

<sup>2</sup> 20 Vict., c. 13.

<sup>3</sup> The provisions of the Army Act regarding billeting do not extend to the Irish Free State.

<sup>4</sup> See many details as to the difficulties which arose as to billeting in Clode, *Mil. Forces*, i. chap. xi.

<sup>5</sup> Clode, *Mil. Forces*, i. 221, 242.

<sup>6</sup> Under a barrack establishment set up by the military authorities; the duties were, however, in a few years transferred to the Board of Ordnance. Clode, *Mil. Forces*, i. chap. xii.

<sup>7</sup> This was decided in 1697, in the case of *Parker v. Flint*, 12, *Med. Rep.* 255.

<sup>8</sup> Clode, *Mil. Forces*, i. 219. A route is an order of the Crown directing some military authority to move troops as considered necessary and requiring the civil authorities to assist in providing quarters and impressing carriages. It does not quite appear whether the inability to move troops without a route was in consequence of the necessity of obtaining by means of the route carriages and billets, or of the route being a necessary authority for military reasons.

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was the practice, which ultimately received statutory authority<sup>1</sup>, for constables and justices to billet only on the production of such routes. Formerly the routes were signed from time to time, as they were wanted, by the Secretary at War, but in 1857 (soon after the creation of the office of Secretary of State for War) they were signed by the Secretary of State in blank, and issued to the military authorities to be used as required.<sup>2</sup> The present practice is to have printed copies of the various routes (general, district, regimental, or deserter) signed in blank in lithograph by the Secretary of State in the name of the King. The details of the movement of troops are filled in by the military authority issuing the route, which is signed by an officer authorised to do so, if a general route, on behalf of the Quartermaster-General, and if a district route, on behalf of the general officer commanding.

Billeting in  
case of  
emergency.

152. By the Army (Annual) Act of 1909 the existing powers of billeting in cases of emergency were substantially increased. Before that Act, as has been already pointed out, the only persons liable to billets were keepers of victualling houses, &c. It was realised, however, that when the Territorial Force was embodied the accommodation in victualling houses in the localities where it would be necessary to concentrate the forces would be entirely inadequate. It was, therefore, provided that when the Territorial Force was embodied, men belonging to that force or to the regular forces could be billeted elsewhere than in victualling houses.

In 1926 the Army Act was further amended to enable these emergency provisions to be used on an Order by His Majesty distinctly stating that a case of emergency exists. The authority to be entrusted with the duty of selecting the houses in which men are to be billeted is the chief officer of the police, who, however, is required to act under the instruction of the police authority, *i.e.*, in England, elsewhere than in the Metropolitan Police District, the standing joint committees in counties and the watch committees in boroughs having a separate police force. The powers are only exercisable when a state of emergency has been proclaimed and then only on the specific authority of the Crown to enforce them.

Billeting of  
women.

153. In 1918 a provision was inserted in the Army Act applying the provisions of the Act as to billeting in time of emergency to women enrolled for employment by the Army Council. There was also power under the Billeting of Civilians Act, 1917 (which lapsed in 1921), to billet civilians, both men and women, engaged on work of national importance, but the Act was designed for large numbers requiring permanent billets (*e.g.*, persons in munition centres), and difficulty was experienced in applying it to the case of women employed by the army who might remain in one place for a few nights only.

Billeting  
during the  
Great War.

154. During the Great War the Defence of the Realm Regulations made under the Defence of the Realm Acts, 1914-15, enabled possession to be taken of buildings for the accommodation of troops. In such cases billeting rates were not payable, but the

<sup>1</sup> A.A., 103.

<sup>2</sup> Clode, *Mil. Forces*, i. 219.



amount of compensation was assessed (except in certain cases where agreement with the owners was possible), by the Defence of the Realm Losses Commission, and after the passing of the Indemnity Act in 1920, by the War Compensation Court. Ch. IX  
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155. From 1757 onwards the Militia Acts authorised the militia when out for training, and when embodied, to be billeted, and this was done without a route under an order from the lieutenant of the county, and from 1871 until the repeal of the Militia Acts in 1921, from the commanding officer.<sup>1</sup> Under s. 181 of the Army Act the provisions of the Act as to billeting now apply to all the auxiliary forces, *i.e.*, at present, the Territorial Army. Billeting  
the auxiliary  
forces.

#### *Impressment of Carriages, &c.*

156. Until the Restoration, carriages and horses could be obtained for the movement of the troops under the Sovereign's prerogative of purveyance. This prerogative was abolished in 1660<sup>2</sup> in consequence of the great oppression caused by it, but in 1662 a power was given temporarily to impress carriages and horses for the use of the navy and the ordnance.<sup>3</sup> Prerogative  
right of pur-  
veyance.

157. The army in general was omitted, perhaps on purpose, from this Act, but in 1692 a section was added to the Mutiny Act<sup>4</sup> authorising justices when required by an order from the Crown to direct the constables to provide carriages for the use of the army when on the march within the kingdom, and specifying the maximum distance to be travelled, and the price to be paid. This section was intended to provide for the impressment of carriages to convey arms and baggage only,<sup>5</sup> and contained restrictions similar to those now in force prohibiting soldiers (other than sick or wounded) from riding in the carriages, and forbidding the impressment of saddle horses. In 1799 a section was added<sup>6</sup> enabling the Crown in case of emergency to require the justices to provide carriages, saddle horses, and vessels for the conveyance of persons as well as baggage. The two sections were annually repeated in the Mutiny Act, with no alteration in principle, and very little in detail, down to the year 1879, when they were embodied in Part III of the Army Discipline and Regulation Act which has been replaced by the Army Act. The power of impressment in an emergency was extended in 1909 to include motor cars and other locomotives, and in 1913 to include aircraft of all descriptions. Impress-  
ment under  
the Mutiny  
Act.

158. At the commencement of the Great War an Act<sup>7</sup> (not limited to the duration of the war) was passed which further extended the power of impressment in emergency to include food, forage and stores of every description. Changes  
since 1914

<sup>1</sup> Clode, *Mil. Forces*, I. 42, and the various Militia Acts.

<sup>2</sup> By 12 Cha. II., c. 24, s. 11.

<sup>3</sup> 14 Cha. II., c. 20, which recited the repeal of the right of purveyance by 12 Cha. II., c. 24. The Act expired, but was revived for seven years by 1 Ja. II., c. 11, was again continued by 4 Will. & Mar., c. 24, and again by 11 Will. III., c. 13, but not subsequently, and was repealed by the Statute Law Revision Act, 1893. The requisition was to be made by warrant from the Lord High Admiral or two Commissioners of the Navy or from the Master or Lieutenant of the Ordnance, directed to two justices of the peace. The maximum distance to be travelled and the rate of remuneration were fixed by the Act.

<sup>4</sup> 4 Will. & Mar., c. 18, s. 27.

<sup>5</sup> See 7 Ann., c. 4, s. 38.

<sup>6</sup> 39 Geo. III., c. 50, s. 46.

<sup>7</sup> 4 & 5 Geo. V., c. 26. See also 5 & 6 Geo. V., c. 58, s.

**Ch. IX** In 1917, consequent upon the establishment of the Air Ministry, the power to impress aircraft was transferred from the military to the air-force authorities.<sup>1</sup>

In 1925, the power to impress carriages both for a route and in emergency was again extended, by the definition of "carriage" as "a vehicle for carriage or haulage other than one specially constructed for use on rails."<sup>2</sup>

Scotland  
and Ireland.

**159.** Impressment of carriages in Scotland was long regulated by Acts passed before the Union with England, which, after that event, were annually kept in force by a provision in the Mutiny Act till 1857, when the provisions applying to England were extended to Scotland.<sup>3</sup> In Ireland also impressment of carriages was regulated until 1813 by Acts passed before the Union, and kept in force after that event by a provision in the Mutiny Act. In that year<sup>4</sup> the provisions of the Irish Acts were transferred into the Mutiny Act, and consolidated as far as possible with the provisions applicable to England, but many differences in detail remained.<sup>5</sup>

Orders  
authorising  
impress-  
ment.

**160.** The power of impressment, like that of billeting, is exercised only by the civil authority, that is to say, the justices and constables. In the case of impressment for ordinary purposes these authorities could at first act only under an order from the Crown, which necessarily was countersigned by the Secretary at War or some Minister; but after 1708<sup>6</sup> orders were allowed to be signed by the General of the Forces, while they might also be signed by the Master-General or Lieutenant-General of the Ordnance from 1720<sup>7</sup> to 1855, when the Board of Ordnance was abolished; and since 1807<sup>8</sup> they have been allowed to be signed by any person duly authorised in that behalf. In practice, however, the power of impressment has been exercised only in pursuance of a route signed as in the case of a route authorising billeting; and this practice has now received statutory sanction in the Army Act (s. 112). Impressment in case of emergency was authorised by the Mutiny Act only on an order signified by the Secretary at War, or after the transfer of his duties, by the Secretary of State for War, or in Ireland by the Chief Secretary or Under Secretary, or the first clerk in the Military Department, and, except as regards Ireland, the law in this respect remains unchanged.<sup>9</sup> The Act imposes penalties for disobedience to a requisition, but does not authorise the seizure of the carriages, &c., unless an order calling out the reserves on permanent service is in force, in which case the requisition may extend to purchase as well as hire, and a person

<sup>1</sup> See 7 & 8 Geo. V, c. 51, s. 7.

<sup>2</sup> See 15 Geo. V, c. 25, s. 10.

<sup>3</sup> 20 Vict. c. 13.

<sup>4</sup> 53 Geo. III, c. 17.

<sup>5</sup> The principal changes in the law as to impressment of carriages were:—

(a) As regards England. 7 Ann. c. 4, s. 37; 39 Geo. III, c. 20, s. 46; 39 & 40 Geo. III, c. 27, s. 45; 58 Geo. III, c. 10, s. 73; 10 Geo. IV, c. 6.

(b) As regards Scotland. Impressment was regulated before the Union by an Act of the Parliament of Scotland, 1693, c. 11. For subsequent changes see 58 Geo. III, c. 11, s. 87; 10 Geo. IV, c. 6; 20 Vict. c. 13.

(c) As regards Ireland, see Acts of Parliament of Ireland, 6 Ann. c. 14; 3 Geo. II, c. 10; 15 Geo. II, c. 6; 7 Geo. III, c. 14; 19 & 20 Geo. III, c. 18; 21 & 22 Geo. III, c. 43; and 41 Geo. III (U.K.), c. 11, s. 55; 53 Geo. III, c. 17; 7 Geo. IV, c. 10, s. 83.

The provisions of the Army Act regarding impressment do not extend to the Irish Free State.

<sup>6</sup> 7 Ann. c. 4.

<sup>7</sup> 6 Geo. I, c. 3.

<sup>8</sup> 47 Geo. III, sess. 1, c. 32.

<sup>9</sup> A.A. 115.

refusing or neglecting to furnish carriages, &c., as ordered, is liable to have them seized (s. 115 (7) (8)). If, in any other case, they were seized, the owner would have a remedy by action for damages.

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161. The Militia Acts made provision for the impressment of carriages for the militia, in 1757, when embodied, and in 1786, when in training. Under s. 181 of the Army Act the provisions of the Act as to impressment of carriages, &c., apply to the auxiliary forces, i.e., at present, the Territorial Army.

Impressment of carriages for the auxiliary forces.

162. The subject of exemption from tolls is nearly connected with that of impressment of carriages. The exemption of carriages and vessels employed under requisitions of emergency was introduced in 1799,<sup>1</sup> when impressment under such requisitions was first allowed. The general exemptions now conferred by s. 143 of the Army Act were introduced into the Mutiny Act in 1803,<sup>2</sup> and 1807.<sup>3</sup> The clause as to payment of ferries in Scotland dates from 1721.<sup>4</sup> Exemptions from turnpike tolls in England are also conferred by the General Turnpike Act of 1822,<sup>5</sup> and by various local Acts. The provisions were extended to the Army Reserve in 1867.<sup>6</sup>

Exemptions from tolls.

### *Conveyance of Troops by Railway.*

163. Shortly after the introduction of railways, provision was made<sup>7</sup> with respect to the conveyance of troops by rail. The first provision was made in 1842<sup>7</sup> and required the directors of a railway company to permit, on the production of a route signed by the proper authorities, the conveyance of officers and soldiers of the army, marines, and militia, with their baggage, stores, arms, and ammunition, at the usual hours of starting, at such prices, or on such conditions as might be contracted for between the Secretary at War and the railway company. This enactment was strengthened in 1844,<sup>8</sup> when the companies were required to provide conveyance at fares not exceeding those mentioned in the Act and a maximum of fares was also prescribed for the conveyance of public baggage, stores, ammunition (with an exception for gunpowder and explosives), and necessities. These provisions were extended to the Army Reserve in 1867, and were re-enacted in 1883<sup>9</sup> as regards the regular, reserve, and auxiliary forces as well as for naval forces. The Act of 1883 reduces the maximum fares and requires the provision of such description of carriages as are specified in the route, but provides that if the company loses the benefit conferred by the other provisions of the Act with respect to the exemption from passenger duty, they are to convey the forces and baggage on the same terms as if the Act had not passed.

Conveyance of troops by rail.

164. In 1871 it was enacted that when Her Majesty by Order in Council declared that an emergency had arisen in which it was

Power to take possession of railways in case of emergency.

<sup>1</sup> 39 Geo. III, c. 20, s. 46.

<sup>2</sup> 43 Geo. III, c. 20, s. 55.

<sup>3</sup> 47 Geo. III, sess. 1, c. 32, s. 60.

<sup>4</sup> 7 Geo. I, c. 6.

<sup>5</sup> 3 Geo. IV, c. 126, s. 32.

<sup>6</sup> 30 & 31 Vict., c. 110, s. 16, re-enacted by 45 & 46 Vict., c. 48, s. 23.

<sup>7</sup> 5 & 6 Vict., c. 55, s. 20. See p. 825.

<sup>8</sup> 7 & 8 Vict., c. 85, s. 12. See p. 826.

<sup>9</sup> 46 & 47 Vict., c. 84, s. 6. See p. 828. This Act does not apply to Ireland.

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expedient for the public service that the Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State might empower any person to take possession of any railroad, and of the plant belonging thereto, and use the same for Her Majesty's service in such manner as the Secretary of State might direct. Full compensation must be paid to the persons of whose railroad possession is taken.<sup>1</sup> The Secretary of State is, by the National Defence Act, 1888, as amended by the Acts relating to the Territorial Army, authorised to claim precedence for traffic for military purposes over all railways whilst an order for the embodiment of the Territorial Army is in force.<sup>2</sup> This Act, as well as the Act of 1871, extends also to tramways.

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<sup>1</sup> 34 & 35 Vict., c. 86, s. 16. See p. 827.

<sup>2</sup> 51 & 52 Vict., c. 31, s. 4. See p. 830.

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## CHAPTER X

## ENLISTMENT

1. A summary of the history of enlistment has been given in Chapter IX : it is proposed in this chapter to sketch the system in operation under existing Acts, and under the Recruiting Regulations, which give general instructions as to the appointment and duties of recruiting agents, the qualification of recruits, the mode of recruiting, and other matters. Object of chapter.

2. A recruit is not to engage for more than 12 years, and may engage to serve the whole time with the colours, or part of the time with the colours and part in the Army Reserve.<sup>1</sup> The Army Council, however, are empowered to direct that where a boy is enlisted before attaining the age of eighteen, the period of 12 years shall be reckoned from the day on which he attains the age of eighteen years.<sup>2</sup> Enlistment for a term less than 12 years would, however, be legal, if a less period were fixed by His Majesty, and any part of such term might be for service in the reserve.<sup>3</sup> Term of original enlistment.

3. The Army Council, however, may allow a soldier, if he so wishes, to go into the reserve at once, or to extend his service with the colours for any time up to the whole term of his original enlistment, or to extend the term of his original enlistment up to 12 years or any shorter period.<sup>4</sup> Change of conditions of service.

4. The old term of 21 years is still retained in the Army Act ; as, subject to any regulations made by the Army Council, a soldier whilst serving with the colours may, after the expiration of 9 years from the date of his original enlistment and with the approval of the competent military authority<sup>5</sup>, re-engage to serve for such a further period of service with the colours as will make up a total of 21 years' continuous service.<sup>6</sup> Re-engagement.

5. Subject also to such regulations, a soldier who so re-engages may, at the end of the 21 years, with the approval of the competent military authority, continue to serve, with a right to his discharge 3 months after he claims it.<sup>7</sup> If, however, at the time when he is entitled to be discharged, he is serving abroad, or a state of war exists, or the Army Reserve is called out on permanent service, he is liable to serve for an additional year.<sup>8</sup> Continuance in service after 21 years.

6. The ordinary period of colour service at present varies from 2 to 12 years in the different arms of the service. Men enlisted for less than 12 years' colour service, if efficient soldiers of good character and fit for service at home and abroad, and if vacancies exist in the number of extensions permitted, are allowed under certain conditions to extend their service so as to complete 12 Regulations as to extension of service.

<sup>1</sup> A.A., 76, 77.

<sup>2</sup> A.A., 76 (proviso).

<sup>3</sup> A.A., 76-78, and Reserve Forces Act, 1882.

<sup>4</sup> A.A., 76-78, and Reserve Forces Act, 1882.

<sup>5</sup> For definition of the competent military authority, see A.A., 101 (1), 190 (32), and R.P. 129 ; see also K.R. 231.

<sup>6</sup> A.A., 84. As to the conditions under which approval is authorised to be given, see K.R., 231-234.

<sup>7</sup> A.A., 85.

<sup>8</sup> A.A., 87 (1), and para. 8 *supra*.

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Regulations  
as to  
re-engage-  
ments, &c.

years with the colours.<sup>1</sup> In a few instances enlistments for 1, 2, 3 or 4 years with the colours only are permitted.

7. Under the present regulations, the re-engagement of soldiers of and above the rank of serjeant may be approved after the completion of 9 years' service on their current engagement, but in the case of soldiers below the rank of serjeant re-engagement cannot be approved until after the completion of 11 years' service on their current engagement, and then only if efficient, well behaved, and medically fit for service at home and abroad.<sup>2</sup>

Under the same regulations warrant officers, staff-serjeants and serjeants, after completing 9 years' service, have the right<sup>3</sup> to re-engage, subject only to the veto of the General Officer Commanding-in-Chief. Other non-commissioned officers are in the same position as regards re-engagement as private soldiers.

Warrant officers, non-commissioned officers and men may, with the approval of the officer in charge of records, continue their service after 21 years, but have not the right to do so.<sup>4</sup>

Power in  
certain cir-  
cumstances  
to detain  
soldier after  
expiration  
of his term.

8. A soldier is liable to be detained in service for 12 months beyond the time at which he would otherwise be transferred to the reserve, or discharged, if a state of war exists, or if he is beyond the seas, or if the Army Reserve is called out. A soldier who would otherwise be discharged may also agree with the competent military authority, while a state of war exists, to continue as a soldier during the war, or until the end of 3 months after he claims his discharge.<sup>5</sup> The power of the Crown to discharge a soldier is noticed below.

In case of imminent national danger or great emergency, when the Army Reserve can be called out for permanent service by the King's proclamation, a like proclamation can require men who would otherwise be transferred to the reserve to continue serving with the colours: these men are then in the same position as if they had been transferred to the reserve and called out on permanent service.<sup>6</sup>

Forfeiture  
of service  
under  
former  
Acts.

9. Acts passed before 1870 adopted, in reckoning the years of a soldier's service, the principle of omitting those periods during which he had not given the service which he had agreed upon enlistment to give, *e.g.*, by having been in prison, or by reason of desertion or absence without leave. After 1870 the effect of applying this principle to men liable under their enlistment to enter the reserve was to protract the time before a soldier's entry into the reserve, but not the term of his liability to service in the reserve. It kept with the colours inferior men whose places might otherwise have been filled by good recruits.

Provisions  
of Army  
Act as to  
forfeiture  
of service.

10. The Army Act, therefore, abandons this principle, and does not, because a man is a bad soldier and constantly under sentence, require him to serve longer, but allows him to be discharged or sent into the reserve at the usual time. On the other hand, it provides that a soldier guilty of desertion or fraudulent enlistment shall, if serving on his original engagement, forfeit, not only the time of his absence, but all his service prior to his conviction, and

<sup>1</sup> K.R., 225-228.

<sup>2</sup> There are certain exceptions to this. See K.R. 231-234 for details.

<sup>3</sup> There are certain exceptions to this. See K.R. 231-232.

<sup>4</sup> See A.A., 86; K.R., 236-245 for details.

<sup>5</sup> A.A., 87, 88, also 77.

<sup>6</sup> A.A., 88. See Reserve Forces Act, 1882, ss. 12, 14.

be liable to serve as if he had been attested at the date of his conviction, or of the order dispensing with his trial in the case of confession. If serving on a re-engagement, a soldier convicted by court-martial of desertion or fraudulent enlistment, or whose trial has been dispensed with, forfeits all previous service rendered during the period of such re-engagement, *i.e.*, from the day following that on which he completed 12 years' service<sup>1</sup>; the term of any imprisonment or detention to which he is sentenced will reckon as part of his service after the date of the sentence. The Army Council, however, have power to restore all or any part of any service forfeited.<sup>2</sup>

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11. This forfeiture, coupled with the provision referred to in para. 19 as to the liability of a soldier convicted of the above offences to general service, will enable a man who has committed them to be sent to serve abroad, or in some other sphere where, by reason of greater activity or otherwise, he will be removed from the class of temptation under which he may have committed the offence. For, however serious the above offences are in a military sense, they are often committed, not from any want of moral character or any reluctance to serve, but from some discontent, or from association with bad companions, or from some sudden or special temptation inducing the man to absent himself.

Effect of provisions.

12. Since 1870, under the Recruiting Regulations, a man may be engaged for service in any particular corps, but otherwise he is enlisted for general service or general service (infantry), and, if enlisted for general service, or general service (infantry), he is, under the present law, to be appointed, as soon as practicable, to some corps, or some corps of that arm of the service, but may be transferred, within three months of his attestation, to any other corps of the same arm or branch of the service.<sup>3</sup> In 1923 an amendment to the Army Act provided that a boy enlisted for general service before attaining the age of eighteen years need not be appointed to a particular corps until he attains that age.<sup>4</sup>

Enlistment for general service and appointment to corps.

13. The power to transfer used formerly to be exercised in such a manner as to make it oppressive and much dreaded by the soldier. The Mutiny Act in 1765 expressly authorised courts-martial to sentence deserters to be transferred for service in foreign parts.

Power to transfer under former Acts.

14. At present, when once a soldier is appointed to a corps for which he enlisted (or, if he enlisted for general service, has served for three months in a corps to which he has been appointed), he may make it his home so long as he serves with the colours, provided he conducts himself fairly well, and is qualified to serve in the place in which his corps is ordered to serve. He may, however, as indicated below, be transferred to another corps with his own consent or compulsorily.

Provisions of Army Act as to transfer.

15. Such cases may occur as that of a man who is appointed to the cavalry and who might be transferred to the infantry if he is unable to learn to ride; or of a man transferred to another corps for the purpose of serving with a brother. Cases such as these would be with the man's consent.

By consent

<sup>1</sup> A.A., 84 (2)<sup>2</sup> A.A., 73, 79. See further as to restoration of service, K.R., 246.<sup>3</sup> A.A., 85 (1).<sup>4</sup> A.A., 82 (2).

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From regiment ordered abroad from home, or vice versa.

16. When a soldier has been invalided from abroad, or his battalion is ordered abroad, and he is unfit to serve abroad, or will, within two years, go into the reserve, or be discharged, he can, if he does not go into the reserve at once, be transferred compulsorily to a corps of the same branch of the service in the United Kingdom or to the reserve. Similarly, when a regiment or battalion abroad is ordered home or to another station, a soldier who has (in addition to his reserve service) two years' colour service to run under his original enlistment, may, for the purpose of serving abroad the residue of his colour service, be transferred compulsorily to another corps of the same branch.

When Army Reserve has been called on.

17. A soldier of the regular forces enlisted for general service may be transferred to any corps of the same arm or branch of the service at any time whilst a proclamation ordering the Army Reserve to be called out on permanent service is in force. (This does not apply to men enlisted before 4th August, 1914.)

Re-transfer to former or to another corps.

18. A soldier transferred to a corps, other than cavalry, artillery, infantry or engineers, may be compulsorily re-transferred to any corps serving in the United Kingdom, or to the corps in which he served immediately prior to his transfer, and when serving beyond the seas to any corps at the station at which he is serving at the time of his removal.

As a punishment.

19. A soldier who has been guilty of desertion or fraudulent enlistment, or has been sentenced by a court-martial to not less than three months' detention, may have his punishment wholly or partly commuted into a liability to general service, and he may then be transferred from time to time to any corps. This power may well be exercised in cases where a soldier gets into trouble at a home station and there is a prospect of his being converted into a good soldier by being sent abroad<sup>1</sup>. A soldier committed as a deserter by a civil magistrate in any part of His Majesty's dominions may be transferred compulsorily to any corps near the place where he is committed, or to any other corps if the competent military authority direct, but this power need not often be exercised.<sup>2</sup>

When corps are amalgamated, &c.

20. Where a corps is amalgamated with one or more other corps, or its constitution is altered, or a unit is transferred from one corps to another, a soldier serving in such corps at the date of amalgamation, &c., is liable to serve in the new corps as if it were the corps in which he was previously serving, but he is not liable without his consent to serve in any unit in the new corps in which he could not, without his consent, have been required to serve if no such amalgamation, &c., had been effected.

Conditions of enlistment not varied without consent of soldier.

21. The enlistment of the soldier is a species of contract between the Sovereign and the soldier, and under the ordinary principles of law cannot be altered without the consent of both parties. The result is that the conditions laid down in the Act under which a man was enlisted cannot be varied without his consent.

<sup>1</sup> See above, para. 11, and A.A., 83 (7).

<sup>2</sup> As to transfer generally, see A.A., 69; K.R., 223-202; and as to competent military authority, A.A., 101 (1), and R.F. 128.



22. Since 1694<sup>1</sup> a soldier has been required to be attested before some civil authority<sup>2</sup> as a mode of protecting him against being entrapped, without understanding the nature of it, into a contract, which, even though not a contract for life, is one of a very serious nature. Attestation was also adopted as a protection from impressment.<sup>3</sup> The practice which exists in many parts of the country of concluding a bargain by giving some earnest of it, was adopted in the case of enlistment by the giving of the shilling, and formerly the acceptance of the shilling rendered the man for some purposes a soldier.<sup>4</sup>

Attestation  
before civil  
authority  
required  
since 1694.

23. Under the Army Act, the acceptance of the shilling has no such effect. A man offering to enlist receives a notice informing him of the general conditions of service in the Army, and of the requirements of attestation, and directing his appearance before a justice.<sup>5</sup> If he fails to appear he has merely broken his bargain; he cannot be arrested as a criminal; and on appearing before the justice he may object to enlist, and if so cannot be required to pay any smart money. If he appears before the justice and takes the oath, he becomes an attested soldier, but he will still be able to procure his discharge within three months by paying a sum which is not to exceed, and is at present fixed at, twenty pounds. The attestation consists in appearing before the justice, answering certain questions, which are recorded, and making and signing a declaration as to the truth of those answers, and taking the oath of allegiance.<sup>6</sup> Thereupon he becomes for all purposes a soldier, and any invalidity in the attestation can only be taken advantage of within three months afterwards. Any immaterial error in the attestation paper can be amended at any subsequent time by a justice.<sup>7</sup> Officers are empowered to act as justices for the purpose of attesting recruits for the regular forces, if authorised by the regulations of the Army Council. The persons who in India, the colonies, and foreign countries have authority to attest recruits, are enumerated in s. 94 of the Army Act.

Provisions  
of Army  
Act as to  
attestation.

24. The attestation paper is signed in duplicate, so that the original may be kept at home and the duplicate follow the man wherever serving.<sup>8</sup> This procedure renders more practicable the provisions of the Army Act (s. 163) for proof of enlistment by a certified copy of the attestation paper, which prevents a prosecution for desertion or fraudulent enlistment abroad from failing by reason of the attestation paper being at home. The same section makes an attestation paper evidence of the soldier having given the

Evidence of  
attestation.

<sup>1</sup> 5 & 6 Will. & Mar. c. 15, s. 2, quoted in Clode, Mil. Forces, ii. p. 7.

<sup>2</sup> See, however, as to attestation before officers, para. 23 (*ad fin.*).

<sup>3</sup> The Secretary at War used to discharge soldiers improperly enlisted. See Clode, Mil. Forces, ii. p. 8. The King's Bench discharged soldiers improperly impressed, *R. v. Kessel* (1788) 1 Burr. 637. See Clode, Mil. Forces, ii. p. 587.

<sup>4</sup> The acceptance of the shilling was treated as an agreement by the man to enlist, and either to complete his enlistment by attestation before a justice, or, in default, to pay smart money, which latterly amounted to 20s. Enactments were made for giving him notice of what he was about to agree to, and for the lapse of a certain time between his receipt of the shilling and notice, and his final attestation before the justice. On the other hand, if he absconded between his acceptance of the shilling and his appearance before the justice, he was liable to be apprehended as a vagabond, and punished accordingly, and also to be compulsorily attested as a soldier.

<sup>5</sup> For persons included in the term "justice" for the purpose of enlistment, see A.A., 94.

<sup>6</sup> As to the form of oath and the validity of enlistment without it, see Clode, Mil. Forces, ii. p. 21.

<sup>7</sup> A.A., 80, 81, 100.

<sup>8</sup> K.R., 1615.

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answers set out in it, a provision useful in case of a prosecution for making a false answer ; in which case an attestation paper alone, and not a copy, is evidence.

Acceptance of pay renders a soldier subject to military law, though not attested.

25. Notwithstanding the provisions for protecting persons from being entrapped into being soldiers, it has always been the law that a man in pay as a soldier is subject to military law, though not attested. This law is still maintained, because if a man chooses to serve and take pay as a soldier, he must be considered to have accepted the conditions under which he is paid and treated as a soldier, and therefore to be subject to military law. Even an alien who enlists by making a false answer would apparently come under the same rule. The Act, however, provides that a man in such a position may claim his discharge at any time, and the commanding officer is to forward the claim to the competent military authority for submission to the Army Council ; but the man, until discharged, has no right to absent himself, and is liable in all respects to be treated as a soldier. This provision as to discharge will not apply to a soldier who has gone through the form of attestation, but whose attestation is illegal, because after three months no advantage can be taken of any invalidity in the attestation.<sup>1</sup>

Enlistment of apprentices.

26. If an apprentice in the United Kingdom, who was bound when under sixteen by a regular indenture for at least four years, enlists while still under twenty-one, he can be claimed by his master through a proceeding before justices, but not otherwise. An apprentice who is so claimed is not liable afterwards to serve under his enlistment. The claim must be made within one month after the apprentice left his master's service. The apprentice is liable to, and on demand of his commanding officer must, be tried by the justice before whom the proceeding is taken for the offence of making a false statement on his attestation. With the above exception, and a similar one for indentured labourers in the colonies, a master cannot claim his servant who has enlisted.<sup>2</sup>

Of minors.

27. An enlistment is a valid contract, although entered into by a person under twenty-one, who by the ordinary rules of law, except where modified by statute, cannot, as a general rule, contract any engagement.<sup>3</sup>

Of aliens.  
Act of Settlement.

28. Though the Act of Settlement<sup>4</sup> which prohibits aliens holding any office, civil or military, does not in terms apply to soldiers, and though there was no statutory prohibition of the enlistment of foreigners, it seems to have been considered that the Crown had no authority either to enlist aliens for service in the United Kingdom, and consequently to punish them for desertion, or to billet them when in this country.<sup>5</sup>

Limited power to enlist aliens.

29. Statutory power was therefore taken in 1757, and again in 1782, to quarter foreign troops in this kingdom,<sup>6</sup> and in 1794 and in subsequent years statutory power was taken by the Crown to

<sup>1</sup> A.A., 100.

<sup>2</sup> A.A., 96, 97. See also K.R. 379 (iv).

<sup>3</sup> See cases cited in Clode, *Mil. Forces*, ii. p. 34 ; *R. v. Ketcherfield Greys* (1823), 1 Barn. & Cr., 345. See also *R. v. Hardwick* (1821), 5 Barn. & Ald. 176.

<sup>4</sup> 12 & 13 Will. III., c. 2, s. 3. An officer does, but a private does not, hold an office.

<sup>5</sup> Clode, *Mil. Forces*, i. pp. 89, 90, 487 ; ii. pp. 83, 431-435. Foreign troops seem to have been received in or brought into the kingdom in the time of Anne and Geo. I. Report on recruiting, 1867, *Parl. P.*, 215.

<sup>6</sup> See 30 Geo. II., c. 2 ; 22 Geo. III., c. 26.

enlist aliens, even though they were to serve abroad.<sup>1</sup> This was subject to the conditions that they were not to be brought into the United Kingdom, except with a view to operations abroad; that if so brought they were not to go more than five miles from the sea coast, and that there were never to be more than 5,000 men in the kingdom. A similar provision was made in 1800<sup>2</sup>, and during the Crimean War in 1854,<sup>3</sup> but in the latter case the only restrictions were that the number of men brought into the United Kingdom was not to exceed 10,000, and that they were not to be billeted. The illegality of the enlistment of aliens has also been recognised in other Acts,<sup>4</sup> till at last, in 1837, it was enacted that, with the permission of the Crown (given in each case), an alien might be enlisted, but the number of aliens in any corps was not to exceed the proportion of one to every fifty natural-born subjects, and this provision has been re-enacted in the Army Act.<sup>5</sup> An alien so enlisted is by the Army Act made incapable of becoming an officer. A relaxation in favour of negroes and persons of colour was originally made in consequence of negroes captured in slavers being taken into the service of the Crown, and was continued to legalise the recruiting of natives on the West Coast of Africa for service in the West India Regiments (now disbanded) and of Lascars in the East; and the relaxation has been extended to inhabitants of British protectorates in order to enable troops raised in the East and West African protectorates to serve outside their boundaries.<sup>6</sup> It must also be recollected that under the British Nationality and Status of Aliens Acts a naturalized alien has the same privileges as a British subject, and therefore is capable of being enlisted to serve His Majesty.

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30. The terms of the enlistment of a soldier, since he has been enlisted directly by the Crown, have always been to serve the Sovereign so long as his services are required, within the period for which he agrees to serve; consequently the Sovereign has always had power to discharge soldiers. But a soldier cannot be discharged except by order of the Sovereign or under some statutory power, such as the sentence of a court-martial, to which is added in the Army Act an "order of the competent military authority."<sup>7</sup>

Discharge.  
Power of  
Crown to  
discharge  
soldiers.

31. A soldier on his transfer to the Army Reserve or discharge is entitled to receive a certificate of service. This certificate combines in one form a "certificate of character," "certificate of transfer to the Army Reserve," "discharge certificate," together with other details relating to the soldier's service. The soldier is provided with a certificate of service to show that he has been properly transferred to the Army Reserve or discharged, and that he is not a deserter.<sup>8</sup> Until he is duly discharged he remains

Certificate  
of service.

<sup>1</sup> See 34 Geo. III, c. 48. The Act 29 Geo. II, c. 5 recited the enlistment of foreigners in America, and gave power to commission them, but not to enlist. This was given by the amending Act, 38 Geo. III, c. 13.

<sup>2</sup> 30 & 40 Geo. III, c. 100.

<sup>3</sup> 18 & 19 Vict., c. 2.

<sup>4</sup> See 44 Geo. III, c. 75; and 46 Geo. III, c. 23, continued by 55 Geo. III, c. 85. See also the provisions on the amalgamation of the Indian Army, 24 & 25 Vict., c. 74, s. 2.

<sup>5</sup> 7 Will. IV & 1 Vict., c. 29; A.A., 95 (1).

<sup>6</sup> A.A., 95.

<sup>7</sup> A.A., 92. For definition of the competent military authority, see A.A., 101 (1), 190 (32), also R.P. 128. For regulations as to discharge, see K.R., 33, 410.

<sup>8</sup> See K.R. 392-410.

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subject to military law. Discharge has been at different times regarded as a reward or as a punishment.<sup>1</sup> When the service was for life, discharge was in many cases the highest object of a soldier's desires, and even now it may be a material advantage to him. There is no reference in the present law to discharge as a reward, but a soldier may be transferred to the reserve or prematurely discharged within a limited period of the termination of his normal colour service, to enable him to take up civil employment which cannot be held open.<sup>2</sup> On the other hand, discharge with ignominy, or discharge towards the end of a man's service shortly before he becomes entitled to receive pension, cannot but have the effect of a punishment.

Conveyance  
home of  
soldiers on  
discharge.

32. A soldier enlisted in the United Kingdom is entitled, if on the completion of his service he is abroad, to be sent to the United Kingdom free of expense for his discharge; and a soldier enlisted in the United Kingdom, and discharged there on termination of his engagement, is entitled to be sent free of expense from the place where he is discharged to the place where he was attested, or to his residence, if his conveyance there costs no more.<sup>3</sup> In no other case has a soldier any *statutory* right to be sent free of expense to any place on discharge, though, in some cases, he may be allowed a free conveyance as a matter of favour.<sup>4</sup>

Disposal of  
lunatic  
soldiers.

33. If a soldier is a lunatic, the Army Council or an officer deputed by them may, on his discharge, send him and also his wife and child, to the workhouse of the parish or union to which he is chargeable, and if he is a dangerous lunatic may send him to the lunatic asylum for lunatics chargeable to that parish or union.<sup>5</sup>

Transfer to  
reserve.

34. The only power, except with the soldier's consent, of sending him into the reserve before the stipulated time is on occasion of his being unfit to serve abroad, or of his regiment being ordered abroad shortly before the expiration of the time of his service with the colours.<sup>6</sup> A soldier who is transferred to the Army Reserve is entitled, on transfer, to free conveyance to his place of attestation or selected place of residence (if not involving greater cost) in the United Kingdom, but has no claim to free conveyance to any place on final discharge from the Army after completing his service in the reserve.<sup>7</sup>

Offences in  
relation to  
enlistment.

35. Offences in relation to enlistment, when committed by persons who are at the time or thereafter become subject to military law, are punishable by military law under ss. 13, 32-34 of the Army Act. A man renders himself liable to punishment not exceeding imprisonment who, after being discharged from any part of His Majesty's military or air forces with ignominy, or for misconduct, or on account of conviction for felony or a sentence of penal servitude, or dismissed with disgrace from the Navy, enlists without disclosing the circumstances of his discharge or dismissal.

<sup>1</sup> See Clode, *Mil. Forces*, ii, pp. 43-47.

<sup>2</sup> See K.R. 869 (ii) (a) & (b) and 370 (ix) (b).

<sup>3</sup> A.A., 90.

<sup>4</sup> See Allowance Regulations, sec. 7, subsection 6, for the present practice.

<sup>5</sup> A.A., 91. See also K.R. 388-391.

<sup>6</sup> A.A., 89.

<sup>7</sup> A.A., 90. For the further benefits in this respect now enjoyed by reservists, see Allowance Regulations, sec. 7, subsection 6.

A recruiter who enlists any man whom he has reason to believe to have been so discharged or dismissed, also renders himself liable to imprisonment.

The making of a false answer to any question on attestation renders the offender liable to imprisonment on the sentence either of a civil court of summary jurisdiction for the place where the offence was committed, or where the offender may happen to be, or of a court-martial<sup>1</sup>; and any person who uses, or gives for use, for the purposes of enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds.<sup>2</sup>

No one may enlist soldiers unless duly authorised, and any person who does so is liable to a fine not exceeding twenty pounds.<sup>3</sup>

A man who, while belonging to one corps, enlists in the same or any other corps, is guilty of fraudulent enlistment, and can be punished for it; but as he has made two engagements he can be held to either engagement, and is thus liable to serve, as the military authorities direct, either in accordance with the terms of his original attestation, or with those of his new attestation, and (unless he has enlisted in the corps to which he already belongs) in either of the corps to which he has been appointed to serve.<sup>4</sup>

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<sup>1</sup> A.A., 99, 33, and notes.

<sup>2</sup> Seamen's and Soldiers' False Characters Act, 1906, (6 Edw. 7, c. 5), s. 2.

<sup>3</sup> A.A., 96. Under the Mutiny Act, authority was in terms granted to consuls and other persons abroad to enlist soldiers; but the present Act makes it clear that those officers have only power, like the justices at home, to attest, and have no power to act otherwise in recruiting unless specially authorised to do so. See A.A. 94.

<sup>4</sup> For details see K.R., 599.

## CHAPTER XI

### CONSTITUTION OF THE MILITARY FORCES OF THE CROWN

Military  
forces.

1. The military forces of the Crown consist of—  
     British forces ;  
     Indian forces ;  
     Dominion forces ;  
     Colonial forces and the Channel Islands Militia.

#### BRITISH FORCES.

British  
forces.

2. The British forces comprise—  
     (A) The Regular Army ;  
     (B) Regular Army Reserve of Officers (including officers of the Militia and the Supplementary Reserve of Officers) ;  
     (C) Army Reserve (including Supplementary Reserve) ;  
     (D) Territorial Army (including the Territorial Army Reserve) ;  
     (E) Miscellaneous Organisations and Establishments ;  
     (F) Royal Marines.

#### (A) *Regular Army.*

Regular  
Army.

3. The Regular Army consists of—  
     (1) Cavalry, composed of two corps, *i.e.*, Household Cavalry and Cavalry of the Line ;  
     (2) Artillery, comprising all Royal Artillery units and personnel, including the local brigades and batteries abroad ;  
     (3) The corps of Royal Engineers, divided into battalions, engineer squadrons, troops, and companies ;  
     (4) The Royal Corps of Signals, divided into corps signals, divisional signals, signal squadrons, companies, troops and sections ;  
     (5) Infantry, composed of five regiments of Foot Guards,<sup>1</sup> and 63 county and rifle regiments (*vide* the Royal Warrant defining "Corps"<sup>2</sup>). Each regiment (except the Royal Inniskilling Fusiliers and the Royal Irish Fusiliers, which form one corps and have one battalion each) includes two line battalions ;  
     (6) The Royal Tank Corps, which consists of tank battalions and armoured car companies ;  
     (7) The Royal Army Service Corps, which is sub-divided into the Horse Transport and Remounts, Supply, and Mechanical Transport sections ;  
     (8) The Royal Army Medical Corps ;  
     (9) The Royal Army Ordnance Corps ;  
     (10) The Royal Army Veterinary Corps ;  
     (11) The Army Educational Corps ;

<sup>1</sup> Two regiments of Foot Guards have three battalions each, one regiment has two battalions, and two have one battalion each.

<sup>2</sup> A.O 49 of 1926.

- (12) The Royal Army Pay Corps;
- (13) The Army Dental Corps;
- (14) Corps of Military Police;
- (15) Military Provost Staff Corps;
- (16) Band of the Royal Military College;
- (17) Corps of the Small Arms and Machine Gun Schools.

There are also the Royal Army Chaplains' Department, Staff for Royal Engineer Services, and Queen Alexandra's Imperial Military Nursing Service. These are not technically corps within the meaning of the Army Act, inasmuch as they are not declared to be so by Royal Warrant.

4. For the purposes of enlistment and service, the unit in the army (in the Army Act referred to by the common name of "corps") is one of the above regiments or corps. A soldier, on his enlistment, is appointed to a corps, and is bound to serve in any part of it; and may belong for the whole of his military life to the corps to which he is first appointed. The officers are also appointed to these corps, but are all alike officers of His Majesty's land forces, and have army rank as such, which may or may not be the same as their regimental rank, that is to say, their rank in the above unit. They are consequently legally liable to serve, if so ordered, with any portion of the army, and not merely with the unit to which they may be appointed; in practice, however, they are not normally required to do so.

Unit of army for enlistment and service is the corps.

An officer has not the right to resign his commission whenever he pleases. This was decided long ago in the case of officers serving the East India Company, and (more recently) in the case of a naval officer who, having been refused leave to resign, sent in his resignation, and quitted the service while abroad in order to take up a civil appointment at home.<sup>1</sup> Exactly the same principles are applicable to commissions in the army.

5. The unit for purposes of discipline and some purposes of administration is not necessarily the same as the above unit. In the case of infantry, for instance, the unit for purposes of discipline is *prima facie* one battalion or the depot; if, however, part of the battalion is serving detached from the rest, that part becomes the unit for purposes of discipline, while for many purposes of administration it remains part of the battalion. At the same time all men in a battalion are liable to be ordered to serve in any other part of the corps, whereas they cannot be transferred to any other corps without their consent or except as a punishment for certain offences, or in special cases provided for by the Army Act.<sup>2</sup>

Unit for other purposes not necessarily the same.

6. Throughout the Army Act the "commanding officer" is referred to for many purposes, and particularly for the purposes of investigating charges and awarding summary and minor punishments. The Act does not define the term "commanding officer." The Rules of Procedure contain a definition, for the purposes of all the rules and also for the purpose of the sections

Explanation of term "commanding officer."

<sup>1</sup> *Parker v. Lord Clive* (1769), 4 Burr. 2419; *Vertue v. Lord Clive* (1769), 4 Burr. 2472; *R. v. Cumming, Ex parte Hall* (1887) L.R. 19 Q. B. D. 13; and *Hearson v. Churchill*, L.R. (1892) 2 Q. B. 144. See also the dictum of Cockburn, C. J., in *Ex parte Trenchard* (1874) L.R. 9 Q. B. 406. *Clode Mil. Forces*, ii, p. 96. Command formerly depended on the commission, but is now the subject of regulation. A. A. 71; see K.R. 170-182.

<sup>2</sup> See Ch. X, paras. 14-20, and A. A. 83.

**Ch. XI** of the Act relating to "*Courts-martial*," and to the "*Power of Commanding Officer*."<sup>1</sup> In cases to which this definition does not apply, the question who is, in any given circumstances, the commanding officer, must depend on the custom of the service and the King's Regulations.

(B) *Regular Army Reserve of Officers*.<sup>2</sup>

Composition of Regular Army Reserve of Officers.

7. An officer who retires from the regular forces on retired pay or with gratuity becomes a member of the Regular Army Reserve of Officers,<sup>3</sup> and is liable to be recalled to army service until he reaches the age limit laid down in the Pay Warrant.<sup>4</sup>

Officers retiring under Indian Regulations, or on account of mental or physical incapacity certified by the regulated medical authority, or on account of misconduct, have not this liability to service in the Regular Army Reserve of Officers or to recall.

A commission in the Regular Army Reserve of Officers may be granted to an officer who has held a commission in the regular forces, Militia, Supplementary Reserve of Officers, Territorial Army, and such other formations of the military forces of the Crown as are provided for by Royal Warrant,<sup>5</sup> and also to an officer who held a temporary commission in the new armies during the Great War, 1914-19, provided that his service was satisfactory throughout, and that his age does not exceed the limits laid down.<sup>6</sup>

Liability to recall to army service.

8. An officer of the Regular Army Reserve of Officers is liable to be recalled to army service at home or abroad at a time of national emergency or when a national emergency appears to be imminent,<sup>7</sup> and becomes subject to military law in the circumstances mentioned in s. 175 (10), Army Act.

Officers of the Militia.

9. Officers of the Militia, formerly styled the Special Reserve of Officers, form a branch of the Regular Army Reserve of Officers established by Royal Warrant.<sup>8</sup> This branch consists of a number of officers commissioned before 5th August, 1914, and still retained, but no new appointments are being made therein.

Officers of this branch are governed by the Regulations for Officers of the Militia (formerly Regulations for Officers of the Special Reserve of Officers, 1911, which, by Royal Warrant,<sup>9</sup> were made applicable to officers of the Militia).

Officers of the Militia are subject to military law at all times.<sup>10</sup>

Supplementary Reserve of Officers.

10. The Supplementary Reserve of Officers is a branch of the Regular Army Reserve of Officers established by Royal Warrant.<sup>11</sup> The Supplementary Reserve of Officers is designed to:—

- (a) ensure that all units, services and departments of the regular forces shall be complete in officers on partial or general mobilization ;

<sup>1</sup> See R.P. 129, and K.R. 526.

<sup>2</sup> P.W. 691-704A.

<sup>3</sup> P.W. 691.

<sup>4</sup> P.W. 521.

<sup>5</sup> P.W. 692, 694.

<sup>6</sup> P.W. 697.

<sup>7</sup> P.W. 701.

<sup>8</sup> Dated 3rd April, 1906, as applied by Royal Warrant dated 27th January, 1922. (Army Order 2 of 1922.)

<sup>9</sup> Dated 27th January, 1922. (Army Order 2 of 1922.)

<sup>10</sup> A.A. 175 (10).

<sup>11</sup> Dated 8th August, 1924. (Army Order 264 of 1924.)



- (b) maintain establishments in the regular forces in war ; and Ch. XI  
 (c) provide officers for Supplementary Reserve units. —

Commissions in the Supplementary Reserve of Officers are given to qualified candidates<sup>1</sup> who are British subjects, the sons of British subjects, and of pure European descent.

11. For purposes of administration and mobilization, officers of the Supplementary Reserve of Officers are divided into categories<sup>2</sup> as follows :— Organisation and administration.

Category A.—Officers of transportation units, Royal Engineers, required to undergo training in peace.

Category B.—Officers (other than those in Category A) required to undergo training in peace. In certain cases they are organised in units in peace. Those not in units form a reserve for the corps to which they belong, being available for use on mobilization as required.

Category C.—Officers not required to undergo training in peace. In the event of their being called to army service they will be required to perform duties similar to those of their profession or occupation in civil life. They may be organised in units in peace as necessary.

12. Except in the Royal Army Medical Corps, where appointments are made in the rank of lieutenant, candidates are normally appointed in the rank of second lieutenant. Officers who have prior service qualifying them for promotion may be appointed in the rank of lieutenant; in the case of Royal Army Medical Corps officers (Category C), such officers may be appointed in the rank of captain. Appointments.

Officers appointed to Supplementary Reserve units may be appointed in such ranks as may be required to complete the establishment of the unit, and in the case of Royal Engineers (Transportation and Postal), Royal Corps of Signals, and Royal Army Service Corps, officers may be appointed in ranks necessary to provide for the mobilization requirements of those corps.

13. Officers of Categories A and B are required to undergo preliminary training (unless exempted therefrom), and further training each year, or otherwise, as may be prescribed for their branch of the service.<sup>3</sup> There is no training for officers of Category C. Liabilities.

Officers of the Supplementary Reserve of Officers are liable to be called out on service when the Army Reserve, or any part of it, is called out by proclamation, and to serve with any unit or part of His Majesty's land forces in any part of the world.<sup>4</sup>

They are subject to military law when ordered on any duty or service for which, as reserve officers, they are liable, or when employed on military service (otherwise than as above) under the orders of an officer of the regular forces who is subject to military law.<sup>5</sup>

14. Officers on attaining the age limit cease to belong to the Supplementary Reserve of Officers, but if they are then below the age limit for removal from the Regular Army Reserve of Period of service.

<sup>1</sup> See S.R.Reg., para. 16 *et seq.*

<sup>2</sup> For further details, see S.R.Reg., para. 2 *et seq.*

<sup>3</sup> S.R.Reg., 100–102.

<sup>4</sup> S.R., Regs. 14.

<sup>5</sup> A.A., 178 (10) (1).

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Outfit allowance and gratuity.

Officers, they continue in that Reserve unless they previously notify that they do not desire to do so.<sup>1</sup>

15. Officers joining the Supplementary Reserve of Officers, who have not previously served as officers in the regular forces, Special Reserve, Militia, Yeomanry, Territorial Force, Territorial Army, or Volunteers, or who have ceased to hold commissions in any of these forces for at least 3 years prior to joining the Supplementary Reserve of Officers, are (except as stated below) allowed an outfit grant of £40, or in the case of an officer appointed to the Cavalry £50. If the officer fails to fulfil certain conditions he may be required to refund the grant or part of it.<sup>2</sup>

Outfit grant is not made to officers whose services are only available on embodiment and who do not undergo training in peace, until they are called up on embodiment being ordered. These officers will then receive such grants as it may be decided to issue to officers commissioned temporarily during an emergency.

An officer is granted, in arrear, at the conclusion of each year's service in the Supplementary Reserve of Officers, a gratuity of £25, provided he fulfils certain conditions.<sup>3</sup>

Pay and allowances.

16. When employed on military duty in peace, or attending an authorised course of instruction, an officer of the Supplementary Reserve of Officers is (with certain exceptions) granted the pay and allowances issuable under the Pay Warrant and Allowance Regulations to an officer of the regular forces of the same rank and arm of the service.<sup>4</sup>

(C) *Army Reserve.*

Army Reserves divided into two classes.

17. The Reserve Forces Act, 1882, authorises the keeping up of an Army Reserve containing two classes, each to consist of such numbers as may be from time to time provided by Parliament; the first class is liable to service either at home or abroad; the second class, if it were in existence, would be liable only to serve in the United Kingdom.

Special Reserve and Militia.

18. The Territorial and Reserve Forces Act, 1907, authorised the conversion of militia units<sup>5</sup> into units of the Special Reserve, and further authorised the enlistment of men who had not served in the regular forces into the first class of the Army Reserve as special reservists. The title of Special Reserve was altered to Militia by the Territorial Army and Militia Act, 1921, but with the exception of certain officers who were commissioned before 8th August, 1914, and who are still retained, this force is not at present maintained in Great Britain or Northern Ireland.

In 1924, however, a new force<sup>6</sup> was formed under the Acts of 1882 and 1907 referred to above, and designated the Supplementary Reserve, although under the terms of the Act of 1907, as modified by the Act of 1921, it is, in law, Militia.

First class of Army Reserve.

19. The first class of the Army Reserve consists of three sections, A, B, and D<sup>7</sup>, and the Supplementary Reserve.

<sup>1</sup> S.R. Regs. 37, 38.

<sup>2</sup> S.R. Regs. 280, 284.

<sup>3</sup> S.R. Regs., para. 206 *et seq.*

<sup>4</sup> S.R. Regs., para. 182 *et seq.*

<sup>5</sup> Raised under the old Militia Acts, which were repealed in 1921. See Ch. IX.

<sup>6</sup> See para. 32, *et seq.*

<sup>7</sup> Section C was abolished in 1904, and the men in it transferred to Section B: A.O. 293 of 1904.

**20.** Section A<sup>1</sup> consists of reservists of certain corps who engage at the time of their first transfer to the reserve to join that section, or are permitted to join that section from Section B within the first twelve months of their transfer to the reserve, for a period of twelve months. No man is allowed to engage in this section unless his assessment of military conduct on transfer to the reserve was at least "good," and unless he is pronounced to be medically fit. The number of men in the section is limited to 6,000, and preference is given to those men who have the highest professional qualifications. Men joining this section must agree in writing to the conditions of service,<sup>2</sup> and are enrolled therein on the date of their transfer to the reserve, or, if transferred from Section B, within twelve months from their first transfer to that section.

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Section A of  
first class.

A reservist of Section A may be permitted to re-engage in that section for a further term which will not exceed two years from the date of his transfer to the reserve. He may revoke his engagement by giving three months' notice in writing to the officer-in-charge of records, if not required for permanent service during that period. On receiving his release, or on completing his engagement in Section A, he reverts to Section B of the reserve under the terms of his army attestation. If a reservist of Section A so misconducts himself as to make himself not immediately available for service, he is relegated to Section B.<sup>3</sup>

**21.** Section B consists of soldiers enlisted for short service, who, having completed their period of colour service, are transferred to the Army Reserve under the conditions of their enlistment, to complete the period for which they originally engaged.

Section B of  
first class.

Section B also includes men who revert to it from Section A; and men the residue of whose term of colour service has been converted into service in the reserve.

The last-mentioned class of men comprised in Section B includes soldiers whose conditions of service have been varied by the Army Council so as to allow them, instead of serving with the colours during their whole period of army service, to enter the reserve at once for the residue of the term of their original enlistment. They are transferred to the reserve, and placed in Section B.<sup>4</sup>

**22.** A soldier on transfer to the Army Reserve receives a certificate of service.<sup>5</sup>

Certificate  
of service.

**23.** Some examples will make clearer the above explanations of Sections A and B of the Army Reserve. V, W, and X all enlist in the infantry for twelve years, of which seven years are to be in army service and five years in reserve service. V and W serve with the colours seven years and then pass into the Army Reserve. V engages to join Section A, and continues in it for twelve months or, if allowed to re-engage in the section, for two years, from the date of his passing to the reserve, when he reverts to Section B for the remaining four or three years of his reserve service, and is then discharged. W serves five years in Section B and is then

Illustrations of  
Sections A  
and B

<sup>1</sup> See K.R. 416-418.

<sup>2</sup> K.R. 418.

<sup>3</sup> K.R. 418, 419, 447 (a).

<sup>4</sup> A.A., 78. K.R. 389 (ii).

<sup>5</sup> K.R. 392.

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discharged. X, after serving three years with the colours, converts, with the sanction of the Army Council, the rest of his army service into reserve service, passes into Section B, and after nine years in it is discharged.

**Section D.**

24. Section D consists of men who, on the completion of their first period of engagement (whether completed wholly with the colours, or partly with the colours and partly in Section B of the reserve), are enlisted or re-engaged to serve for a further period of one, two, three or four years in this section. Only men whose military conduct was assessed at not less than "good" are eligible for service in this section of the reserve.

A man can be re-engaged, if he is in Section B of the reserve, within six months of the completion of his current engagement, and if he is serving with the colours, within the fortnight before his discharge, but in either case his service in Section D does not commence until the termination of his original engagement, i.e., 12 years. Re-engagements for further periods in Section D may be permitted by officers in charge of records, provided that such further re-engagements are completed before the reservist attains the age of 45 years in the case of skilled tradesmen possessing certain trade qualifications, drivers (internal combustion) of the Royal Artillery, and storemen of the Royal Army Ordnance Corps, and 42 years in the case of other reservists.<sup>1</sup> A note of the man's enlistment or re-engagement (as the case may be) is entered on his certificate of service, as well as on the original and duplicate (army) attestations, and on his discharge from Section D he receives a certificate of discharge, the form of which depends on whether he enlisted or re-engaged for Section D.<sup>2</sup>

**Second class of Army Reserve.**

25. The second class of the Army Reserve consisted, besides men enrolled under former Acts, of men enlisted or enrolled from among—

(a) Chelsea out-pensioners, or Greenwich out-pensioners being ex-marines, and

(b) Men who had served full time in the army.<sup>3</sup>

Both these divisions of the second class are extinct.

**Entry by transfer or enlistment.**

26. Men who enter the reserve, if they enter under the terms of their original enlistment, or on a variation of those terms, are transferred; and, if otherwise, are either enlisted or re-engaged, and may be enlisted or re-engaged for such term and in such manner as is fixed by regulations.<sup>4</sup>

**Annual training of Army Reserve men.**

27. Army Reserve men are liable to be called out annually for training, for a time not exceeding twelve days or twenty drills, and may during that training be attached to a body of the regular or auxiliary forces.<sup>5</sup>

**Calling out in aid of civil power.**

28. They are also liable to be called out by a Secretary of State, to aid the civil power in the preservation of the public peace. The men residing in any town or district are liable to be called out for the same purpose by the officer commanding the forces in the town or district on the requisition in writing of a justice.<sup>6</sup>

<sup>1</sup> K.R. 439.

<sup>2</sup> K.R. 494.

<sup>3</sup> Reserve Forces Act, 1882, s. 3.

<sup>4</sup> Reserve Forces Act, 1882, s. 4.

<sup>5</sup> Reserve Forces Act, 1882, s. 11.

<sup>6</sup> Reserve Forces Act, 1882, s. 5.

29. Further, they are liable to be called out on permanent service, by proclamation of His Majesty in Council "in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation if Parliament be not then sitting".<sup>1</sup>

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—  
Liability to permanent service.

In addition to the above liability, reservists belonging to Section A are liable under Section 1 of the Reserve Forces and Militia Act, 1898, to be called out on permanent service during the period of their engagement in that section, whether it lasts for twelve months or for two years, if required for service outside the United Kingdom when warlike operations are in preparation or in progress. When so called out they are liable to serve with the colours for not more than twelve months. Should, however, any portion of the reserve be called out on permanent service under Section 12 of the Act of 1882, then reservists of Section A become liable to serve to the same extent as any other portion of the reserve which has been called out.<sup>2</sup>

The calling out of Section A under the Act of 1898 does not require a proclamation by the King in Council, or involve the meeting of Parliament, but any exercise of this power must be reported to Parliament as soon as may be.<sup>3</sup>

30. Every man, when called out, is liable to serve until His Majesty no longer requires his services; but not beyond his unexpired term of service in the reserve, with the addition of twelve months more if a state of war exists, or if he is on service beyond the seas, or if the men in the reserves are at the time called out, that is, if there is imminent national danger or great emergency. An Army Reserve man, when so called out, forms part of the regular forces, and may be appointed to any corps as a soldier, and transferred within three months afterwards to any other corps.<sup>4</sup>

Extent of liability.

Under the Regulations for the Army Reserve contained in the King's Regulations, a reserve man is not allowed to reside permanently outside the United Kingdom without authority from the officer in charge records concerned,<sup>5</sup> and is not allowed to quit the United Kingdom or proceed to sea without leave from the officer in charge of records.<sup>6</sup> He is also duly to report himself and, if called on, to present himself for medical examination.<sup>7</sup>

31. When so allowed by regulations, an Army Reserve man can voluntarily re-enter on service with the colours for all or any part of the residue unexpired of the term of his original enlistment, or for any time not exceeding twelve years from the date of his original enlistment.<sup>8</sup>

Re-entry on army service.

<sup>1</sup> Reserve Forces Act, 1882, s. 12. A.A., 88 (4).

<sup>2</sup> See para. 20 above; K.R. 432.

<sup>3</sup> Reserve Forces and Militia Act, 1898, s. 1 (g).

<sup>4</sup> Reserve Forces Act, 1882, s. 14.

<sup>5</sup> The Reserve Forces Act, 1906, s. 1 (2), provides for the making of regulations under s. 30 of the Reserve Forces Act, 1882, prescribing the conditions under which men belonging to the reserve may reside out of the United Kingdom, and the conditions under which men may be enlisted (out of the United Kingdom) for the reserve. K.R. 456, 457.

<sup>6</sup> K.R. 458, 459.

<sup>7</sup> K.R. 440.

<sup>8</sup> A.A., 78 (2). Under existing regulations, a man cannot, under ordinary circumstances re-enter on army service unless specially permitted to do so. K.R., 457-459.

**Ch. XI****Supple-  
mentary  
Reserve.**

**32.** As mentioned in para. 18, the Supplementary Reserve was established in 1924, under the authority of the Reserve Forces Act, 1882, and the Territorial and Reserve Forces Act, 1907, with the object of completing on mobilization the requirements, mainly technical, of certain arms and branches of the Regular Army, for which the remainder of the Army Reserve did not provide. It is therefore primarily a reserve of tradesmen.

**Organisation  
and adminis-  
tration.**

**33.** For purposes of administration and mobilization, the warrant officers, non-commissioned officers and men of the Supplementary Reserve are divided into categories<sup>1</sup> as follows:—

**Category A.**—Consisting of personnel of transportation units, Royal Engineers, required to undergo training in peace.

**Category B.**—Consisting of personnel required to undergo training in peace.

**Category C.**—Consisting of personnel not required to undergo training in peace.

With certain exceptions,<sup>2</sup> Category B personnel of Supplementary Reserve units are raised and administered by Territorial Army County Associations in the same way as units of the Territorial Army, and are affiliated to Territorial Army units or formations for training and administration.

Supplementary reservists of Category B not organised in peace in separate Supplementary Reserve units are administered in the same way as personnel of the Territorial Army, and for this purpose they are attached to Territorial Army units of the arm or branch for which they enlist, except in the case of R.A.V.C. personnel, who are attached to such T.A. unit as the G.O.C.-in-C. may direct.

Supplementary reservists of Category C may be organised in units in peace, or may be allotted to Regular Army or Supplementary Reserve units which exist in peace or which will be formed on mobilization.

**Conposi-  
tion.**

**34.** The Supplementary Reserve comprises the following:—

**Royal Artillery:** Personnel not organised in units;

**Royal Engineers:** Transportation units, army troops companies, electrical and mechanical companies, and personnel not organised in units;

**Royal Corps of Signals:** Signal companies and sections, and personnel not organised in units;

**Royal Army Service Corps, Royal Army Medical Corps, Royal Army Ordnance Corps, and Royal Army Veterinary Corps:** Personnel not organised in units.

With the exception of the transportation units of the Royal Engineers which consist of personnel of Categories A and C, Supplementary Reserve units are composed of personnel of Category B. Personnel not organised in units belong to Category B or C.

**Enlistment  
and re-  
engagement.**

**35.** Supplementary reservists of Categories A and B are enlisted for a period of 4 years, and those of Category C for periods of 2, 3 or 4 years, in accordance with instructions issued by the War Office.

<sup>1</sup> For further details, see S.R.Reg., para. 2 *et seq.*

<sup>2</sup> S.R.Reg. 6.

The classes of men to be enlisted and the corps for which they are required are fixed by the Army Council from time to time. Ch. XI

The periods for which a supplementary reservist may be allowed to re-engage, subject to his possessing certain qualifications, are 1, 2, 3 or 4 years.

To be eligible for enlistment into the Supplementary Reserve, a man must have attained the age of 19 years, and for re-engagement he must not have passed his 42nd birthday. Men enlisted for service as tradesmen may be retained up to, but not beyond, 46 years of age, provided that they are qualified in their trades and are able to pass the necessary tests.<sup>1</sup>

36. Supplementary reservists may enlist into the Regular Army in accordance with instructions published in Recruiting Regulations from time to time, and on final approval of such enlistment are deemed to be discharged from the Supplementary Reserve. They are not granted a free discharge for the purpose of joining the Royal Navy or Royal Air Force.<sup>2</sup> Enlistment into the Regular Army, &c.

37. Supplementary reservists of Categories A and B are required to undergo training annually or otherwise, as may be prescribed for their branch of the service.<sup>3</sup> Supplementary reservists of Category C are not required to undergo training in peace time. Liabilities

Supplementary reservists form part of the first class of the Army Reserve, and are liable under s. 14 (2) of the Reserve Forces Act, 1882, to serve in any part of the world on mobilization. They are liable to be called out when the Army Reserve, or any part of it, is called out by proclamation. When called out on permanent service they become in all respects soldiers of the regular forces.<sup>4</sup>

The liability to be called out in aid of the civil power under s. 5, Reserve Forces Act, 1882, will not be enforced, but when supplementary reservists have been called out on permanent service, or when subject to military law under s. 176 (5) (a) or (d) of the Army Act, then their liability as regards being ordered on duties of this nature is the same as that of men of the Regular Army.<sup>5</sup>

Supplementary reservists are subject to military law when called out for training and exercise, or when employed in military service under the orders of an officer of the regular forces, or when called out on permanent service.<sup>6</sup> At other times they are subject to the Reserve Forces Acts and to the Regulations for the Supplementary Reserve.

38. Supplementary reservists of Category B organised in units who change their permanent residence may, under certain conditions, be re-posted to another Supplementary Reserve unit of the same corps and category situated in the locality in which they intend to reside. Those not organised in units may similarly, on a change of residence, be re-attached to another Territorial Re-posting and transfers.

<sup>1</sup> See generally S.R.Regs. 48-75.

<sup>2</sup> S.R.Regs. 60, 81.

<sup>3</sup> S.R.Regs. 109-113.

<sup>4</sup> S.R.Regs. 76.

<sup>5</sup> S.R.Regs. 152.

<sup>6</sup> A.A. 176 (5) (a) (d).

**Ch. XI** Army unit of the same arm or branch of the service situated in the locality in which they intend to reside.

Supplementary reservists of Categories A and B may, under certain conditions, be permitted to transfer voluntarily to Category C of the same corps or arm of the service in order to complete the unexpired portion of their current engagement. Supplementary reservists of Category C may also, under certain conditions, be permitted to join Categories A and B of the same corps or arm of the service in order to complete the unexpired residue of their current engagement.<sup>1</sup>

**Discharge.**

39. The various causes of discharge and special instructions relating thereto are contained in the Regulations for the Supplementary Reserve. On discharge, a supplementary reservist is furnished with a discharge certificate.<sup>2</sup>

**Bounties,  
pay and  
allowances.**

40. Supplementary reservists are granted bounties at various rates ranging from £8 to £20 annually, according to trade groups and provided certain conditions are fulfilled.<sup>3</sup>

When employed on military duty in peace, supplementary reservists are (with certain exceptions) granted the pay and allowances issuable under the Pay Warrant and Allowance Regulations to members of the regular forces of the same rank and arm of the service. When called out on permanent service, pay and allowances at army rates are admissible for a supplementary reservist from the date of joining, provided that he is accepted for service.<sup>4</sup>

#### (D) Territorial Army.

**Transfer  
of former  
auxiliary  
forces to  
Special  
Reserve and  
Territorial  
Force.**

41. Down to the year 1908 the auxiliary forces consisted of the Militia (raised under the old Militia Acts), Yeomanry and Volunteers. As stated in Chapter IX, the old Militia was absorbed into the Special Reserve, and the existing Volunteers and Yeomanry were absorbed into the Territorial Force.

The only auxiliary force raised at the present time in Great Britain is the Territorial Army.

**Territorial  
Army.**

42. The Territorial Force was created by the Act of 1907.<sup>5</sup> This Act was amended by the Act of 1921,<sup>6</sup> which, *inter alia*, altered the title to Territorial Army. It consists<sup>7</sup> of:—

Headquarters

Honourable Artillery Company (Included below under R.H.A. and Infantry).

Royal Horse Artillery.. 1 Brigade (3 batteries).

Yeomanry .. .. 14 Regiments.

Scouts .. .. 2 Regiments.

Royal Artillery .. .. Field—

42 Divisional Brigades (168 batteries).

16 Army Troops Brigades (50 batteries).

Medium—

11 Brigades (44 batteries).

Light—

1 Brigade (3 batteries).

<sup>1</sup> S.R. Regs. 87-90.

<sup>2</sup> S.R. Regs. 91-99.

<sup>3</sup> S.R. Regs. para. 219 *et seq.*

<sup>4</sup> S.R. Regs. para. 177 *et seq.*

<sup>5</sup> T.R.F. Act, 1907 (7 Edw. 7 c. 9), p. 844.

<sup>6</sup> T.A. & M. Act, 1921 (11 & 12 Geo. V c. 37), s. 1.

<sup>7</sup> As constituted on 1st February, 1928.



		Heavy (Coast Defence)—
		17 Brigades (38 batteries).
		Anti-Aircraft—
		5 Brigades (13 batteries).
Royal Engineers	..	1 Field Squadron.
		14 Divisional Engineers (42 Field Coys.).
		16 Fortress Groups (28 companies).
		2 A.A. Battalions (6 companies).
		3 A.A. Searchlight Groups (11 coys.).
		Engineer and Railway Staff Corps.
Royal Corps of Signals		1 Cavalry Divnl. Signals (2 squadrons).
		14 Divnl. Signals (42 companies).
		16 Field Artillery Signal Sections.
		11 Medium Artillery Signal Sections.
		2 Wireless Sections.
		2 A.A. Signal Companies.
Infantry	.. ..	169 Battalions (including the H.A.C. (Infantry), and Inns of Court O.T.C.).
Royal Tank Corps	..	8 Armoured Car Companies.
Royal Army Service Corps		1 Cavalry Divisional Train.
		14 Divisional Trains.
Royal Army Medical Corps		1 Cavalry Field Ambulance.
		14 Field Ambulances.
		3 General Hospitals.
		4 Hygiene Companies (15 sections).
Royal Army Ordnance Corps		1 Cavalry Detachment.
		14 Companies.
Royal Army Veterinary Corps		
Royal Army Chaplains' Department		
General List		
The Territorial Army Reserve. <sup>1</sup>		

43. Under the Act of 1907, County Associations were established<sup>2</sup> whose duty it is to raise, organise in accordance with schemes prepared by the Army Council, maintain and administer the units of the Territorial Army in their charge. For this purpose they receive certain grants from the State.<sup>3</sup>

An Association is also required to ascertain the military resources and capabilities of a county ; to give advice and to render assistance to the military authorities.<sup>4</sup>

An Association has no power over the training of the Territorial Army nor does it possess any powers of command. These duties are vested in the military authorities.<sup>5</sup>

The Auxiliary Air Force and Air Force Reserve Act, 1924, authorised the establishment and constitution of County Joint

<sup>1</sup> Formed under T.R.F. Act, 1907, s. 7 (6), which was amended by the T.A. & M. Act, 1921. A Territorial Army Reserve of Officers is maintained, but the Territorial Army Reserve for other ranks is at present in abeyance.

<sup>2</sup> T.R.F. Act, 1907, s. 1.

<sup>3</sup> *ib. s. 3.*

<sup>4</sup> *ib. s. 2.*

<sup>5</sup> *ib. s. 2 (1).*

Ch. XI —	Associations with duties in relation both to the Territorial Army and to the Auxiliary Air Force, and responsible both to the Army Council and the Air Council. Five County Joint Associations only have as yet been formed. <sup>1</sup>
Regulations under the Act.	44. His Majesty, by order under the hand of a Secretary of State, may make orders with respect to the government, discipline, pay and allowances of the Territorial Army, and other matters relating to it; and subject to any such orders the Army Council may make general or special regulations for the like purpose. <sup>2</sup>
First Commissions.	45. The President of an Association has the right of nominating qualified candidates to first commissions in the Territorial Army within 30 days after receipt of notice of a vacancy. <sup>3</sup>
Officers' appointments.	46. To be nominated for a commission a candidate must be a British subject, the son of British subjects, and of pure European descent, and be in all respects suitable to hold a commission. <sup>4</sup> Applicants for commissions in the lowest rank apply to County Associations; those desiring commissions in a higher rank apply to the G.O.C.-in-C. concerned through the usual channel. Appointments to commissions in any but the lowest rank are, however, made only in exceptional circumstances.
Outfit grant.	47. With certain exceptions an officer on appointment receives an outfit grant on stated conditions, <sup>5</sup> but is liable to be called upon to refund the amount unless he fulfils the prescribed requirements. <sup>6</sup>
Pay and allowances.	48. Pay and allowances, including engineer or corps pay, additional pay and working pay, are (with certain exceptions <sup>7</sup> ) issuable at the rates laid down in the Pay Warrant and Allowance Regulations for the days of actual attendance at annual training, at courses of instruction, and at other times if the G.O.C.-in-C. approves. An allowance in aid of mess expenses is issuable during annual training in camp, week-end camps, &c. <sup>8</sup>
Preliminary and annual training, and courses of instruction for officers.	49. The Act of 1907 makes no specific provision for the preliminary or annual training of officers of the Territorial Army, but the regulations made under section 7 lay down the requirements in this respect <sup>9</sup> , as well as the optional courses of instruction which may be undergone. <sup>10</sup>
Resignation and retirement.	50. An officer may resign his commission provided certain conditions are fulfilled <sup>11</sup> , and is liable to compulsory retirement on attaining the age of 45 to 57 years, according to his rank or appointment <sup>12</sup> . After 15 years' commissioned service he may be permitted to retain his rank and to wear the uniform of the corps in which he last served.

<sup>1</sup> County of London, City of London, City of Edinburgh, City of Glasgow, and County of Warwick.

<sup>2</sup> T.R.F. Act, 1907, s. 7. Part I of the T.A. Regs. contains the orders made by the King; see p. 17 T.A. Regs. Under this, the Army Council are the sole administrators and interpreters of the Regulations.

<sup>3</sup> T.R.F. Act, 1907, s. 8; T.A. Regs. 53-56.

<sup>4</sup> T.A. Regs. 51, 52.

<sup>5</sup> T.A. Regs., 705.

<sup>6</sup> T.A. Regs., 708.

<sup>7</sup> T.A. Regs., 644.

<sup>8</sup> See T.A. Regs., 623 *et seq.*, 691, 692.

<sup>9</sup> See Appendix X to T.A. Regs.

<sup>10</sup> See Appendix VIII to T.A. Regs.

<sup>11</sup> See T.A. Regs., 141-143.

<sup>12</sup> T.A. Regs., 137.

51. In England and Wales an officer of the Territorial Army who is a sheriff is exempted during embodiment from personally performing that office, and a field officer is not required to serve in the office of high sheriff. In Scotland an officer of the Territorial Army may be a sheriff substitute, and in ordinary circumstances his judicial duties will have first claim on him. No officer or man is compelled to serve as a peace officer or parish officer, and both are exempt from serving on any jury. This latter exemption is an absolute one in Scotland, but in England and Wales it is a qualified exemption.<sup>1</sup> The acceptance of a commission in the Territorial Army by a member of Parliament does not involve the vacation of his seat in Parliament.

Ch. XI  
—  
Civil rights  
and ex-  
emptions.

52. When serving with officers of the regular forces or Militia, officers of the Territorial Army take rank as the junior of their degree; when serving with officers of the Supplementary Reserve of Officers, they take seniority on equal terms in accordance with dates of appointment or promotion.<sup>2</sup>

Precedence.

53. An officer of the Territorial Army, if on the active list, is subject to military law at all times, and if on the Territorial Army Reserve, at any time when doing duty with any body of troops for the time being subject to military law, or when ordered on any duty or service for which as reserve officer he is liable.<sup>3</sup>

Application  
of military  
law.

Warrant officers, non-commissioned officers and men of the Territorial Army are subject to military law as soldiers when being trained or exercised either alone or with any portion of the regular forces or otherwise; when attached to or otherwise acting as part of or with any regular forces; when embodied; and when called out for actual military service for purposes of defence in pursuance of any agreement.<sup>4</sup>

54. Each recruit is enlisted for a county, and is appointed to serve in such corps for that county or for an area comprising the whole or part of that county as he may select, and if that corps comprises more than one unit within the county, he is posted to such one of those units as he may select.

Enlistment.

The term of service is four years.

After a recruit has been posted to a unit, he cannot, when not embodied, be removed to another without his consent.<sup>5</sup>

Men can, however, when embodied, legally be posted from one unit to another, but a pledge<sup>6</sup> is given to every man enlisting into the Territorial Army that when sent outside the United Kingdom he shall serve with his own unit, but that if in case of special military emergency after being sent out of the United Kingdom he is necessarily attached to another unit, the attachment shall be temporary, and the man shall be returned to his own unit as soon as possible.

The following classes are not permitted to enlist (or re-enlist) into the Territorial Army:—

Men belonging to the Royal Navy, or to any corps of the Regular Army, Royal Marines, Royal Air Force, Militia, Territorial Army,

<sup>1</sup> T.R.F. Act, 1907, s. 23, T.A. Regs., 480-488, and Ch. XII, para. 9.

<sup>2</sup> T.A. Regs., 108; S.R. Regs., 27.

<sup>3</sup> A.A., 175 (3a).

<sup>4</sup> A.A., 176 (6a). See also T.A. Regs., 18.

<sup>5</sup> T.R.F. Act, 1907, s. 7 (4) (c).

<sup>6</sup> Para. 9 of A.F. E.501a.

**Ch. XI** or reserves to these forces; men who have been discharged as unfit for further service, for misconduct, or with a bad or indifferent character; men who have been convicted of a serious offence by the civil power; members of any police force; aliens; men with disability pensions, and members of the Army Recruiting Staff.<sup>1</sup>

**Re-engagement.**

55. Re-engagement is allowed for 1, 2, 3 or 4 years, as may be fixed by the County Association.<sup>2</sup>

**Liabilities. Preliminary training and annual training.**

56. A man of the Territorial Army is required to attend the number of drills and fulfil other conditions prescribed by the regulations by way of preliminary training<sup>3</sup>, and, annually, to attend a certain number of drills and other courses, as well as to train for not less than eight or more than fifteen days in the dismounted or eighteen days in the mounted branch of the Territorial Army.<sup>4</sup> Subject, however, to any general direction which may be given by the divisional, cavalry brigade or air defence brigade commander, or by the colonel, Royal Artillery, or chief engineer attached to command staff, the officer commanding a unit may grant leave of absence to a man from the whole or any portion of the annual training, on account of sickness or any other urgent reason.<sup>5</sup>

**Embodiment.**

57. When a proclamation has been issued<sup>6</sup> ordering the Army Reserve on permanent service, the King may order the Army Council to issue, and when issued, to revoke or vary, directions for embodying all or any part of the Territorial Army; and if all men of the first class of the Army Reserve are called out under a proclamation, then all men of the Territorial Army must be embodied within one month unless both Houses of Parliament present an address to the King asking that the whole force be not embodied, but unless the emergency so requires, the whole of the Territorial Army must not be embodied until Parliament has had an opportunity of presenting such an address. If it is desired to embody the whole force when Parliament is not sitting, Parliament must be summoned by proclamation to meet within ten days if it would not otherwise meet sooner.<sup>7</sup>

**Special service.**

His Majesty may accept the offer of any part or men of the Territorial Army to subject themselves to the liability to be called out for actual military service for the purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Army is embodied or not. This liability for special service is limited to certain units of the Territorial Army.<sup>8</sup>

**Disembodiment.**

58. His Majesty may, by proclamation, order the Territorial Army to be disembodied, when the Army Council must issue

<sup>1</sup> T.A. Regs., 189.

<sup>2</sup> T.A. Regs., 186.

<sup>3</sup> T.R.F. Act, 1907, s. 14 (1) (b). In addition to this the recruit may be required to train for a certain time by way of preliminary training if an Order in Council so directs, but no such order has up to the present been issued (T.R.F. Act, 1907, s. 14 (1) (a)).

<sup>4</sup> T.R.F. Act, 1907, s. 15. The period of annual training may, by Order in Council, be extended to a maximum of thirty days, be reduced or be dispensed with (T.R.F. Act, 1907, s. 15 (2)).

<sup>5</sup> T.A. Regs., 458.

<sup>6</sup> Reserve Forces Act, 1882, s. 12.

<sup>7</sup> T.R.F. Act, 1907, s. 17.

<sup>8</sup> T.R.F. Act, 1907, s. 13 (2); T.A. Regs. 18, 19.

directions for the disembodiment to be carried out.<sup>1</sup> Until such proclamation is issued the Army Council can give directions from time to time for actually calling out for embodiment or for disembodiment any part of the force.

59. A man who fails to attend at the time and place appointed for preliminary or annual training, or to attend the number of drills, &c., required, is liable to a fine not exceeding five pounds for each offence which can be inflicted by a court of summary jurisdiction.<sup>2</sup> Proceedings may be instituted by the commanding officer or any other officer of the unit, but must, in England and Wales, be instituted within six months of the date on which the act complained of was committed.

Failure to attend, or to perform drills required, for preliminary or annual training.

60. When a member of the Territorial Army neglects or refuses to deliver up on demand, or negligently loses, any articles issued to him as a member of the force he may be proceeded against before a court of summary jurisdiction and is liable to pay the value of the articles; and when he designedly makes away with, sells, pawns, or wrongfully destroys or damages any of such articles he is not only liable for their value but, on conviction by a court of summary jurisdiction, may also be fined a sum not exceeding five pounds.<sup>3</sup>

Liability in respect of articles lost, damaged or destroyed.

61. If a man of the Territorial Army when embodied, enlists into the regular forces or any force raised in India or a colony without having obtained a regular discharge from the Territorial Army or without having fulfilled the conditions enabling him so to enlist, he commits the offence of fraudulent enlistment.<sup>4</sup>

Fraudulent enlistment and false answer.

If a man on enlistment for the Territorial Army makes a false answer on his attestation he should be dealt with under s. 99 of the Army Act.

62. Certain offences must be dealt with before the civil courts; some are cognizable by either a civil court or by a court-martial, others are cognizable by a court-martial alone, and reference should be made to the Territorial Army Regulations for particulars.<sup>5</sup>

Procedure in connection with certain offences.

63. A man who, when called out on embodiment, fails without reasonable excuse to attend, and who afterwards surrenders or is apprehended, does not forfeit the whole of his prior service on conviction for desertion as in the case of the regular soldier, but the period which elapsed between the time of the commission of the offence and the time of his apprehension or voluntary surrender does not reckon towards his period of service for discharge.<sup>6</sup>

Forfeiture of service.

64. A man of the Territorial Army may enter the Royal Navy or enlist into the Regular Army, the Militia (Supplementary Reserve, Categories A and B only), the Royal Marines or the Royal Air Force, and, on final approval, is deemed to be discharged from the Territorial Army, but must return in good order the articles of clothing, &c., issued to him belonging to the Territorial Army. He is not, however, allowed to join the Royal Naval Reserve or the Army Reserve (other than the Supplementary Reserve, Categories A or B).<sup>7</sup>

Enlistment into regular forces, Navy, &c.

<sup>1</sup> T.R.F. Act, 1907, s. 18.

<sup>2</sup> T.R.F. Act, 1907, s. 21.

<sup>3</sup> *Id.*, s. 22.

<sup>4</sup> A.A. 18 (1) (a), and T.A. Regs., 325.

<sup>5</sup> T.A. Regs. 305-318, 320, 332.

<sup>6</sup> T.R.F. Act, 1907, s. 20 (3).

<sup>7</sup> T.A. Regs. 207; S.R. Regs. 50.

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Courts-martial.

**65.** When a person belonging to the Territorial Army is tried by court-martial, one member of the court, if practicable, is to belong to the Territorial Army, and to the same branch as that to which the accused belongs.<sup>1</sup>

Discharge.

**66.** The method of obtaining discharge from the Territorial Army is laid down in the Act,<sup>2</sup> and the various classes of discharge are given in the regulations,<sup>3</sup> but there is one class of discharge which must be particularly noticed, *vis.*, the discharge of a man for disobedience to orders while doing military duty, for neglect of duty, for misconduct, or for any other sufficient cause. A C.O. has power to discharge a man for any of these reasons,<sup>4</sup> but the exercise of this power is ordinarily to be restricted to cases of misconduct or inefficiency while the man is subject to military law. In all cases of this kind an investigation of the alleged misconduct is to be held; the evidence against and for the man, and particulars of the offence or offences, are to be recorded in order that, if the man appeals to the Army Council,<sup>4</sup> full particulars of the case may be forthcoming.

Northern Ireland.

**67.** There is power under the Act<sup>5</sup> for the raising of Territorial Army units in Northern Ireland, but no Territorial Army units are raised in that country.

*(E) Miscellaneous Organisations and Establishments.*

Royal Military College and Royal Military Academy.

**68.** The Royal Military College is maintained for the purpose of affording a special military education to candidates for commissions in the Cavalry, Infantry, Royal Tank Corps, Royal Army Service Corps, and the Indian Army. The Royal Military Academy is similarly maintained for those who are candidates for commissions in the Royal Artillery, Royal Engineers, and Royal Corps of Signals. These establishments have a code of regulations of their own.<sup>6</sup> The gentlemen cadets at these institutions (other than non-commissioned officer cadets of the Regular Army) are not subject to military law.

Schools.

**69.** The Duke of York's Royal Military School maintains and educates the sons of soldiers or deceased soldiers. The Queen Victoria School maintains and educates the sons of soldiers of Scottish Regiments, or of Scotsmen who are serving or have served in the Navy, Army, or Air Force. The boys are not subject to military law.

Officers Training Corps.  
Object.

**70.** The primary object of the Officers Training Corps is to provide students at schools and universities with a standardized measure of elementary military training, with a view to the students eventually applying for commissions in the Territorial Army (including the Reserve) or the Supplementary Reserve of Officers.

Constitution.

**71.** The Corps consists of contingents of those universities and schools whose offer has been accepted by the Army Council. To

<sup>1</sup> R.P. 20 (B).<sup>2</sup> T.R.F. Act, 1907, s. 9 (3).<sup>3</sup> T.A. Regs., 199-206.<sup>4</sup> T.R.F. Act, 1907, s. 9 (4), and T.A. Regs. 201.<sup>5</sup> T.R.F. Act, 1907, s. 1 (1).<sup>6</sup> The Regulations respecting admission to the Royal Military College and the Royal Military Academy, &c., published with A.O. 386 of 1927.

be eligible for inclusion in the Corps a university or school contingent must have an enrolled strength of 30 cadets, and have at least one commissioned officer.

72. The Corps is organised in two divisions :—

(i) Senior division, composed of university contingents.

(ii) Junior division, composed of school contingents.

73. The officers may belong to any of the following classes :—

(a) Officers appointed to the General List (Territorial Army) for duty with the Officers Training Corps ;

(b) Officers of the Territorial Army seconded for service with the Officers Training Corps ;

(c) Officers of the Regular Army Reserve of Officers (including the Supplementary Reserve), or of the Territorial Army temporarily attached for duty with the Officers Training Corps and borne on the establishment of contingents ;

(d) Officers of medical units appointed to Royal Army Medical Corps (Territorial Army) for duty with the Officers Training Corps.

The officers are subject to military law at all times.

74. The cadets have no legal liability to service and are not required to take the oath of allegiance. They are not subject to military law.

75. The Territorial Cadet Force consists of platoons, companies, and other bodies of lads formed for the purpose of receiving mental, moral and physical training through the medium of military instruction.

Cadet units are raised under the provisions of the Territorial and Reserve Forces Act, 1907, s. 2 (2) (f), and are administered by County Associations through the Council of County Territorial Associations, which acts as the agent of the War Office.

Every recognised cadet unit must be affiliated to a Territorial Army unit except where it is already affiliated to a unit of the Regular Army, in which case it must also be in touch with the County Association of the county in which it is situated.

The Territorial Cadet Force is not subject to military law, and cadet officers, warrant officers and non-commissioned officers have no power of command over members of the regular or reserve forces or of the Territorial Army.<sup>1</sup>

#### (F) *Royal Marines.*

76. On several occasions regiments appear to have been raised for service at sea, but it was formerly the practice for regiments of the land forces to be sent to serve on shipboard ; and even as late as the last century certain regiments were more usually sent on this service than others.

77. The corps now known as the Royal Marines was first raised in the year 1755, and consisted of two divisions, the infantry and artillery. In 1923 the two divisions were amalgamated under the title of Royal Marines, and rank after the Royal Berk-

<sup>1</sup> Full information as to the assistance given to cadet units and the system by which they are administered is contained in the Regulations governing the formation, organisation and administration of Territorial Cadet Units in the British Isles, issued with Army Orders for September, 1927.

**Ch. XI** shire Regiment<sup>1</sup>. The men are liable to serve on board His Majesty's ships, and, when borne on the books of any of His Majesty's ships for such service, are subject to the Naval Discipline Act, as if they were seamen of the Royal Navy. When not borne on the books of any of His Majesty's ships they are subject to the Army Act.<sup>2</sup>

**Term of service, &c.**

78. The men are enlisted according to the procedure in Part II of the Army Act, except that the duration of their service is fixed, by Acts applying only to them, at a term of twelve years, with a power to re-engage for a further period of nine years, making up twenty-one years in the whole.<sup>3</sup> The service of a marine on a foreign station may be prolonged for two years; and a marine who desires to continue in the service after twenty-one years may give notice of his desire, and, with the approval of his commanding officer, may continue in the service, with a right to be discharged after the expiration of three months' notice. A marine, on the completion of his term of service abroad, is, like a soldier, entitled on his discharge to be sent home to England. A marine is not allowed to reckon towards completion of his engagement the time during which he is absent from his duty by reason of imprisonment, or desertion, or other specified circumstances.<sup>4</sup>

**Transfer of marine to army.**

79. The Army Council and the Admiralty can make regulations providing for the transfer with his consent of a marine to another part of the regular forces, and of a soldier of any part of the regular forces to the Royal Marines, and a man so transferred is to become a marine or a soldier of the other part of the regular forces as nearly as possible as if he had been enlisted for the force to which he is transferred.<sup>5</sup>

**Expenses of Royal Marines.**

80. The expenses of the marine force are included in the votes for the Admiralty, and the force is under the control of the Admiralty, and not of the Army Council; and the Admiralty exercise, in respect of the Royal Marines, many functions that are exercised, in the case of the land forces, directly by His Majesty.<sup>6</sup>

#### INDIAN FORCES.

**Observations on Indian forces.**

81. The Indian regular forces consist of regiments and formations normally stationed in India, and formed almost entirely from Indians. The Indian officers, who hold commissions from the Viceroy and Governor-General of India, and men of these forces, are subject to the Indian Army Act, 1911, or previous Acts which it has superseded, wherever they are serving, and are only to a limited extent subject to the Army Act.<sup>7</sup> There are also Europeans, and a certain number of Indians, serving as officers, and persons of certain degrees of European descent serving as non-commissioned officers, hospital apprentices, or otherwise, who, though forming part of the Indian forces, belong to His Majesty's regular land forces, and are subject to British

<sup>1</sup> Clode, *Mil. Forces*, i. Chs. iv, xiii. As to precedence, see K.R., 875.

<sup>2</sup> A.A., 179 (15), 190 (8).

<sup>3</sup> 10 & 11 Vict. c. 63; 20 Vict. c. 1.

<sup>4</sup> 10 & 11 Vict. c. 63, s. 8.

<sup>5</sup> A.A., 179 (12).

<sup>6</sup> A.A., 179 (4) (9)-(11).

<sup>7</sup> A.A. 190.



and not to Indian military law. The enlistment of Europeans for these forces, except for medical or other special service, is prohibited.<sup>1</sup> Commissions on the unattached list for appointment to the Indian Army may be given to cadets who have passed through Sandhurst or the Royal Military College, Kingston, Canada, to candidates from approved Universities, and to officers of the Supplementary Reserve and Territorial Army, and transfers to the Indian Army are effected after a period of probation. If it is required to supplement this direct supply, officers of British units serving in India can be transferred permanently to the Indian Army if qualified according to the regulations for the time being in force. Officers may be employed, according as the Government of India may direct, in any military or civil employment, irrespective of their ranks in the Indian Army. Such officers, while holding civil employments, cannot assume a military command, but continue to receive promotion in military rank in the ordinary course; and on accepting any military appointment they are entitled to take military command.<sup>2</sup>

In addition to the Indian regular forces there are the Auxiliary Force composed of all arms and the Indian Territorial Force composed of infantry and pioneer battalions, the former, speaking generally, recruited from European British subjects and the latter from those who are not European British subjects.

#### DOMINION FORCES.

82. The forces of the self-governing Dominions are raised entirely under the legislation passed in the several Dominions. In the case of the Dominion of Canada and the Union of South Africa, the forces may, for the purpose of defence of their own Dominion, be required to serve outside the territories in which they are raised; while in the case of the Commonwealth of Australia, the Dominion of New Zealand and the Irish Free State this is not provided for. The forces of Australia, New Zealand, and South Africa are raised on the basis of Acts providing for liability to compulsory service and training, while those of Canada are raised entirely by voluntary enlistment and enrolment, although the Governor-General is empowered in the event of a *levée en masse* being proclaimed to require all male inhabitants to serve, who are capable of bearing arms. The forces may be divided generally into permanent forces, who train continuously and correspond to the Regular Army in Great Britain, and non-permanent forces, whose training is non-continuous, and who correspond generally to the Territorial Army. The Governments of the Dominions of Canada and New Zealand and the Commonwealth of Australia have adopted as their code of military discipline the Army Act, which, broadly speaking, applies to the permanent forces at all times and to the non-permanent forces when they are called out for training or active service. The Army Act has not been adopted by the Union of South Africa, but the Union Military Code, which applies to the permanent forces at all times, is a modified form of the Act and Rules of Procedure.

Observations  
on Dominion  
forces.

<sup>1</sup> A.A. 180 (2) (A) and note.

<sup>2</sup> Royal Warrant of 16 January, 1908, as amended.

## Ch. XI

## COLONIAL FORCES AND THE CHANNEL ISLANDS MILITIA.

Observations on  
Colonial  
forces and  
Channel  
Islands  
Militia.

83. The Colonial forces are of two classes, namely, the forces raised by the government of a colony, and the forces raised in a colony by direct order of His Majesty to serve as auxiliary to, and in fact to form part for the time being of, the regular forces. The first class of Colonial forces—those raised by the government of a colony, such as the King's Own Malta Regiment, and the Royal West African Frontier Force—are only subject to the Army Act (i) when so provided by the law of the colony, or (ii) when serving with part of His Majesty's regular forces, but in that case only so far as the colonial law has not provided for their government and discipline, and subject to the exceptions specified in the general orders of the officer commanding the forces with which they are serving. The Army Act (s. 177), however, provides that the colonial law may extend to the forces although beyond the limits of the colony where they are raised.

The second class of Colonial forces—of which the Royal Malta Artillery, the non-Europeans of the Fortress Company, Royal Engineers, and Signal Section, Royal Corps of Signals, at Hong Kong, and the Hong Kong-Singapore Brigade, Royal Artillery, are examples—is referred to by ss. 175 (4) and 176 (3) of the Army Act. Their pay and maintenance are voted annually by the Imperial Parliament, and they are in fact Imperial forces although serving in a colony. The Royal Malta Artillery is declared by the Army Act to be part of the regular forces, while the others are included in the Royal Warrant defining "Corps"<sup>1</sup>. The men composing the Hong Kong-Singapore Brigade, Royal Artillery, are in fact enlisted to serve in any part of the world. A man enlists in the Royal Malta Artillery for service in Malta and its dependencies alone.

The Channel Islands Militia is raised under local laws, and consists of the Royal Militia of the Island of Jersey, the Royal Guernsey Militia and the Royal Alderney Militia.

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<sup>1</sup> Army Order 49 of 1928, but see A.A. 176 and note.

## CHAPTER XII

## RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE

1. The English law on this subject differs from that of some foreign countries. A man who joins the Army—whether as an officer or as a private—does not cease to be a citizen. His official character is superimposed upon his civil character, and does not obliterate it.<sup>1</sup> At the same time it has been found necessary, or desirable, to modify in certain minor respects his status as a civilian, in some cases by imposing restrictions and in others by conferring immunities and privileges.

Legal status of officers and soldiers.

2. So far as the criminal law is concerned, the position of an officer or soldier is the same as that of a civilian. If he commits an offence against the ordinary criminal law he can be tried and punished by the civil courts as if he were a civilian; and various liabilities are incurred by an officer who, on due application being made, refuses to hand over a man under his command to the civil authorities, or to assist in his apprehension.<sup>2</sup>

Under the criminal law.

3. In the case of civil rights, duties and liabilities, there is a difference between the position of a soldier and that of an ordinary citizen. The former cannot whilst in the service change his domicile,<sup>3</sup> or acquire<sup>4</sup> by residence a status of irremovability from, or a settlement in, some parish other than his own.<sup>5</sup> Again, he cannot be punished for deserting or neglecting to maintain his wife and family, or leaving them chargeable to a parish or union. Although his legal liability to maintain them and any bastard children remains, it cannot be enforced against his person, pay, or equipment, but provision has been made for deducting limited sums from his pay for the maintenance of such dependants.<sup>6</sup> A soldier can without any official approval contract a legal and valid marriage; but claims to "marriage allowance" or "married quarters" are governed by regulations.<sup>6</sup>

In civil matters.

4. Certain restrictions have also been imposed on the creditors of a soldier, so as to prevent the Crown losing his services. He cannot, under s. 144 of the Army Act, be arrested or compelled to appear before a court on account of any debt, damages, or sum of money under £30; but the exemption applies to his person, not to his property; and a creditor may sue and have execution, so long as he does not touch the person, pay, or equipment of the soldier. A soldier cannot be placed under stoppages for his private debts, and persons who suffer soldiers to contract such debts do so at their own risk. An officer or soldier is unable, legally, to charge or assign his pay or pension.<sup>7</sup>

Restrictions on creditors.

<sup>1</sup> See *Burdett v. Abbott* (1812) 4 Taunt. 401 per Mansfield, C. J.; ; *Haddon v. Evans* (1919), 35 T.L.R. 642.

<sup>2</sup> A.A. 39, 41, 162. Under the Jurisdiction in Homicides Act, 1862, provision is made whereby a person subject to military law who is charged with the murder or manslaughter of any other person subject thereto, committed in England or Wales, may, in certain circumstances and by order of a judge be tried at the Central Criminal Court in London.

<sup>3</sup> *Ex parte Cunningham* (1884) L. R. 13 Q.B.D. 418; *In re Maccreight* (1885), L.R. 30 Ch. Div. 168.

<sup>4</sup> Clode, Mil. Forces, ii. 38. Poor Removal Act, 1846, s. 1.

<sup>5</sup> A.A. 145. It will be noted that this section does not apply to an officer.

<sup>6</sup> See K.R. 306-314; Allowance Regs., sec. 6.

<sup>7</sup> A.A. 141. As to the appropriation of a portion of the pay or pension of a bankrupt officer to his creditors, see the notes to that section.

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Wills.

5. Officers and soldiers have, while actually "*in expeditions*," certain privileges in regard to making wills.<sup>1</sup>

By s. 11 of the Wills Act, 1837, a soldier (which term includes an officer), "being in actual military service," may dispose of his personal<sup>2</sup> estate by a so-called "soldier's will," although under the age of 21.

With regard to real estate the Wills (Soldiers and Sailors) Act; 1918, provides in effect that—(i) a "soldier's will" disposing of real estate in England or Ireland<sup>3</sup> shall be valid if the testator was of such age and the disposition is made in such manner and form that it would have been valid if it was a disposition of personalty by a person domiciled in England or Ireland; and (ii) that such a will disposing of heritable property in Scotland shall not in future be invalid by reason only that the testator is under 21, provided he is of such an age that he could if domiciled in Scotland have made a valid testamentary disposition of movable property.

For the above purposes a man is "in actual military service" (*in expeditions*) when a state of war exists and he has taken some step towards joining the field forces, *e.g.*, from the time when he or the unit to which he belongs receives embarkation or mobilization orders for active service,<sup>4</sup> down to the final conclusion of operations<sup>5</sup>; and the term "soldier" has been held to include an army nursing sister *en route* for the front.<sup>6</sup>

A "soldier's will" may consist of a document not attested (as a civilian's will must be), *e.g.*, a private letter to the person intended to benefit under it, or to some one else, stating his wishes; also, a mere verbal statement of his wishes is sufficient if such statement can be proved to the satisfaction of the court.<sup>7</sup>

To establish the validity of such a will it is not necessary to prove that he knew that he was making a will, or had power to make one in that manner; but it must be shown that he intended to express deliberately his wishes as to the disposal of his property in the event of his death.<sup>8</sup> Such a will is revoked (like any other will) by his subsequent marriage.<sup>9</sup> It continues in force until revoked or superseded, unless its language shows an intention that it should only take effect if the testator died during the particular expedition.<sup>10</sup>

A minor can by a "soldier's will" validly exercise a general power of appointment exercisable by will<sup>11</sup>; and a "soldier's will"

<sup>1</sup> It is not possible to deal fully with this subject in the present work. The information here given, together with that in the Soldiers' Service and Pay Book (A.B. 64), should be sufficient to enable an officer to make, or help a soldier to make, a valid disposition of his property upon emergency; but except where small amounts of personal property alone are concerned it is most unwise to rely upon the expedient of a "soldier's will" made without legal advice.

<sup>2</sup> See *Godman v. Godman*, L.R. (1920), P. 261.

<sup>3</sup> Now applicable only to Northern Ireland.

<sup>4</sup> *In the goods of Hicock*, L.R. (1901), P. 78; *Gatward v. Kne*, L.R. (1902), P. 99; *In the goods of Gordon* (1905), 21 T.L.R. 653; *In re Kitchen* (1919) 35 T.L.R. 612.

<sup>5</sup> *In re Diamond* L.R. (1916), 2 Ch. 240.

<sup>6</sup> *In the estate of Stanley* L.R. (1916), P. 192.

<sup>7</sup> See, *e.g.*, *In the goods of Scott* L.R. (1903), P. 243; *In the estate of Parris* (1918) 34 T.L.R., 437; *In the goods of Tweedale* (1875), L.R. 3 P. & D. 204; *In the goods of Gordon* (1905) 21 T.L.R., 653; *In the goods of Coleman* (1920) 2 I.R. 332.

<sup>8</sup> *In re Stable* L.R. (1919), P. 7; *Godman v. Godman* L.R. (1920), P. 261.

<sup>9</sup> *In the estate of Wardrop* L.R. (1917), P. 54.

<sup>10</sup> *In the estate of Parris* (1918) 34 T.L.R., 437; *In the goods of Coleman*, *supra*.

<sup>11</sup> *In re Warner* L.R. (1916), 2 Ch., 82.

can validly appoint a guardian of his infant children (even though it disposes of no property)<sup>1</sup>. Ch. XII

A person who (although attestation is unnecessary) does in fact attest such a will, is not thereby precluded from taking a benefit thereunder.<sup>2</sup>

6. It is not necessary to take out probate or letters of administration in respect of small sums due to deceased officers and soldiers in respect of pay, pensions or prize money.<sup>3</sup> Estate duty is not payable on the property of soldiers under the rank of serjeant who are killed or die while in the service.<sup>4</sup> Where a person dies from wounds inflicted, accident occurring or disease contracted, within three years before death, while on active service against an enemy or on service which is of a warlike nature, and was at the time subject to military law as an officer or soldier, a total or partial remission of death duties may be granted.<sup>5</sup> Special provision has been made for collecting and realising the effects of a deceased officer or soldier, and paying certain regimental debts thereout.<sup>6</sup> Wound and disability pensions are exempt from income tax.<sup>7</sup> Death duties, &c.

7. Officers are entitled to an exemption from licence duty for any servant who is a soldier and is employed by the officer in accordance with the regulations of the service.<sup>8</sup> Exemption from licence duty.

8. Officers and soldiers have no personal exemption from rates; but where an officer occupies property in respect of his office, the occupation is treated as occupation by the Crown, and he is not liable to be rated in respect of that property, inasmuch as the Crown is exempt from rates. If the occupation is for his own personal benefit, and not for the benefit of the Crown, an officer will be liable to be rated like any other individual. Similarly, officers and soldiers of the regular forces, when on duty, are exempt from tolls,<sup>9</sup> but are not so exempt when travelling<sup>10</sup> for their own purposes only. Exemptions from rates and tolls.

9. An officer of the regular forces on the active list is disqualified for the office of sheriff of any county or borough, and for that of mayor or alderman (or any other office) in any municipal corporation; but such disqualification does not extend to membership of a county council.<sup>11</sup> Officers of the Territorial Army are not so disqualified.<sup>12</sup> Public or municipal offices, jury service, &c.

Officers of the regular forces while on full pay,<sup>13</sup> soldiers of the regular forces,<sup>14</sup> militiamen (supplementary reservists) when

<sup>1</sup> Wills Act, 1918, s. 4.

<sup>2</sup> *In re Leonard* L.R. (1915), 2 Ch., 240.

<sup>3</sup> Pensions and Yeomanry Pay Act, 1884, s. 4 (personalty not exceeding £100); Army Pensions Act, 1890; Army Prize Money Act, 1892.

<sup>4</sup> Stamp Act, 1815, Sched., Part III, and Finance Act, 1894, s. 8 (1).

<sup>5</sup> Finance Act, 1900, s. 14; Death Duties (Killed in War) Act, 1914; Finance Act, 1918, s. 44; Finance Act, 1919, s. 31; Finance Act, 1924, s. 38.

<sup>6</sup> Regimental Debts Act, 1893, in Part III, *post*.

<sup>7</sup> Finance Act, 1919, s. 16; see s. 17 as to war gratuities.

<sup>8</sup> 32 & 33 Vict., c. 14, s. 19(5). As to firearms used for military purposes, see the Gun Licence Act, 1870, s. 7, as amended by subsequent enactments; see also the Firearms Act, 1920, s. 1 (8).

<sup>9</sup> A.A. 143, and notes thereto.

<sup>10</sup> See *Smith v. Southampton, &c., Co.* (1919) 35 T.L.R. 435, as to what is "personal luggage" in the case of an officer.

<sup>11</sup> A.A. 146.

<sup>12</sup> A.A. 181(5).

<sup>13</sup> Jurors Act, 1870, s. 9, sched.; Jurors (Scotland) Act, 1825, s. 2; Jury Laws Amendment Act (Northern Ireland), 1936, s. 2, sched. 2.

<sup>14</sup> A.A. 147.

**Ch. XII** — called out on permanent service or otherwise subject to military law,<sup>1</sup> and officers and men of the Territorial Army<sup>2</sup> are exempt from jury service.<sup>3</sup>

Officers on full or half-pay and officers and men of the Territorial Army are exempt from compulsion to undertake any municipal or parochial office.<sup>4</sup>

In time of war, provision is sometimes made relieving members of local authorities from the disqualification which would otherwise result from their absence on service.<sup>5</sup>

Other  
restrictions.

10. Officers on full pay and soldiers are prohibited by the King's Regulations from joining the directorate of any public or other company without permission. They are also prohibited from acting either directly or indirectly as agents for any company, firm, or individual engaged in trade,<sup>6</sup> and are subject to restrictions as to communications to the press, publication of books and articles. &c.<sup>7</sup>

Parlia-  
mentary  
candidature,  
&c.

11. An officer or soldier is prohibited from taking any active part in political meetings, or becoming a candidate or prospective candidate for Parliament until he has retired, resigned, or been discharged, or in the case of a field marshal, until he has given up any appointment which he may be holding.<sup>8</sup> This prohibition does not apply to an officer or man of the reserve forces (including officers in any reserve of officers) or the Territorial Army as such, except when embodied or called out on permanent or active service, or when holding a full time paid appointment, e.g., adjutant.<sup>9</sup>

Right to  
vote at  
Parlia-  
mentary  
election.

12. An officer or soldier has the same right as a civilian to vote at an election for members of Parliament.

The Representation of the People Act, 1918,<sup>10</sup> gives to an officer or soldier certain privileges in respect of registration and of voting. He is entitled, on attaining the age of 21 years, to be registered as an elector for any constituency for which he would have had a qualification but for his service. He is also entitled to be placed upon the list of absent voters and can then, if serving in the United Kingdom, record his vote by post in the prescribed manner, or, if serving outside the United Kingdom, he can appoint a proxy in the prescribed manner to vote on his behalf.<sup>11</sup>

An officer or soldier, if in the United Kingdom, ought to be allowed, if he wishes, to go to the place of election and record his vote, unless military exigencies render it impossible, but where he is registered on the absent voters' list he can record his vote only by post.

<sup>1</sup> A.A. 190(8), 178, 147.

<sup>2</sup> T.R.F. Act, 1907, s. 23(4).

<sup>3</sup> In the case of Scotland and Northern Ireland the exemption is absolute, but in the case of England and Wales it is conditional upon the person taking steps to keep his name off the jury list. (Juries Act, 1870, s. 12.)

<sup>4</sup> Municipal Corporations Act, 1882, s. 253; in the case of parochial offices there is no express provision, but the principle appears to be generally recognised. As to reservists, see Reserve Forces Act, 1882, s. 7.

<sup>5</sup> Local Authorities Relief Acts, 1900, 1914.

<sup>6</sup> K.R. 516.

<sup>7</sup> K.R. 522.

<sup>8</sup> K.R. 517. See also O. in C., dated 25th July, 1927, and Army Order 321 of 1927.

<sup>9</sup> T.A. Regs. 273.

<sup>10</sup> As amended by subsequent Acts.

<sup>11</sup> See K.R., App. IX.

13. In conclusion reference may be made to certain miscellaneous enactments such as those which deal with marriages of soldiers abroad,<sup>1</sup> the registration of marriages and births abroad,<sup>2</sup> the keeping of service canteens without full compliance with the law of licensing,<sup>3</sup> and the acting of plays in service recreation rooms without a stage play (or theatre) licence.<sup>4</sup>

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—  
Miscellaneous  
enactments.

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<sup>1</sup> Foreign Marriage Act, 1892, ss. 12, 22.

<sup>2</sup> Registration, &c., (Army) Act, 1879.

<sup>3</sup> A.A. 174; Licensing Consolidation Act, 1910, s. 111 (2); Licensing (Scotland) Act, 1903, s. 50.

<sup>4</sup> A.A. 174A.

## CHAPTER XIII

### EMPLOYMENT OF TROOPS IN AID OF THE CIVIL POWER

**Object of the chapter.** 1. The object of this chapter is to give an explanation of the law relating to the duty of the soldier in case of riot and other disturbances of the peace.

**Two main obligations under the common law.** 2. The common law, which governs soldiers and other citizens alike, imposes two main obligations in such cases, which are, firstly, that every citizen is bound to come to the aid of the civil power when the civil power requires his assistance to enforce law and order, and, secondly, that to enforce law and order no one is allowed to use more force than is necessary.

**Legal position regarding soldiers.**

These obligations apply to everyone in every type of disturbance. 3. When called to the aid of the civil power soldiers in no way differ in the eyes of the law from other citizens, although, by reason of their organisation and equipment, there is always a danger that their employment in aid of the civil power may in itself constitute more force than is necessary.

The law is clear that a soldier must come to the assistance of the civil authority where it is necessary for him to do so, but not otherwise. No excess of force or display must be used, and a soldier is guilty of an offence if he uses that excess, even under the direction of the civil authority, provided he has no such excuse as that he is bound in the particular circumstances of the case to take the facts, as distinguished from the law, from the civil authority.<sup>1</sup>

Though there is no legal difference between soldiers and other citizens in respect of the duty to respond to the call of the civil authority, there is, in cases of disturbance where the civil authority has not asked for help, a duty to take action laid upon military officers by the King's Regulations which is not laid upon other citizens, except magistrates and peace officers (K.R. 1256), and even though the civil authority should give directions to the contrary the officer commanding troops, if it is really necessary, is bound to take such action as the circumstances demand.

**Requisition for intervention by troops**

4. The primary obligation for the preservation of order and for the suppression of disturbance rests with the civil authority. The civil authority<sup>2</sup> should only requisition troops when satisfied that it is or will be impossible to deal with the situation which has developed, or is immediately apprehended, by means of all the resources of the civil power, that is to say, the local police, supplemented by any additional police that can be procured from elsewhere or by any police reserves or special constabulary that may be available.

An officer who receives a requisition for troops from a distance is bound to comply if he is not in full possession of the facts. If, on arrival, the magistrate demands immediate intervention before the officer has had time to investigate for himself, he must intervene

<sup>1</sup> See the appendices to this chapter.

<sup>2</sup> For definition of "civil authority" for this purpose, see K.R. 1230.



and he would be protected by the law. If, on arrival, an officer has time to investigate, he must do so, and acquaint himself with the facts and judge for himself before he intervenes. An officer on the spot, while attaching great weight to the opinion of the magistrate, must himself decide whether military intervention is necessary to deal with the circumstances in which he has been requisitioned.

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5. There remains to be considered on whom, after a decision to take action has been made, the responsibility rests in the case of the employment of troops in the suppression of disturbances. As stated in para. 4, the primary duty of preserving public order rests with the civil authority. An officer, therefore, in all cases where it is practicable, should place himself under the direction of a magistrate.

Responsibility between civil and military authority.

The duties of a magistrate do not, however, impose upon him a knowledge of the weapons at the disposal of the troops, or of the effect of those weapons; he may not be, therefore, the best judge as to the degree of force to be employed by the soldiers in the particular circumstances for which he desires and requests their intervention. A magistrate, therefore, if he acts with discretion, will necessarily defer to the opinion of the officer on military matters, particularly as to the degree of force to be used. The primary responsibility, however, remains with the magistrate, and if he is on the spot, it is his duty to request the officer "to take action"<sup>1</sup> when the civil resources at his disposal are insufficient to deal with the circumstances which present themselves.

On the other hand, an officer will not perform his duty if, from fear of responsibility, he takes no action and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate to direct him to take action.

If the magistrate and the officer are acting together, the obligation lies on the magistrate to request the officer to take action, but the action to be taken, *i.e.*, the degree of force required in the circumstances, must be judged by the officer; the latter would incur considerable responsibility if he were to fire without a request to take action from the magistrate, or if he were to refuse to fire when requested to do so, but circumstances which he sees before him might justify an officer in firing, or not firing, notwithstanding the request which he receives from the magistrate. The officer must judge of the degree of force to be employed, and it is his duty to fire if he cannot otherwise stop the violence which is being committed before him. He must decide whether it is necessary to fire or not, and is responsible for his action.

6. The types of disturbance in which troops may be called upon to intervene matter little, and the principles set forth in the preceding paragraphs apply to each and every type, but an explanation of the law relating to disturbances may be useful to officers.

Types of disturbance.

7. The law makes provision for the following situations, which are those in which troops may find themselves when called to the assistance of the civil authority:—

Laws affecting various types of disturbance.

(1) A National Emergency (Emergency Powers Act, 1920).

<sup>1</sup> K.R. 1238-1257.

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- (2) Intimidation of Workers (Conspiracy and Protection of Property Act, 1875).
- (3) Unlawful picketing (Trade Disputes Act, 1906, and Trade Disputes and Trade Unions Act, 1927).
- (4) Unlawful assembly.
- (5) Riot (Riot Act, 1715).
- (6) Insurrection.

In each of the above situations, troops may be called upon to intervene. The first three are generally connected with trade disputes and industrial unrest. The merits or demerits of such disputes or unrest are of no concern whatsoever to soldiers, who are solely concerned with the duty and obligation common to all citizens of assisting the civil authority in the maintenance of law and order, and in these situations their principal duty will be the protection of persons and property.

Emergency  
Powers  
Act, 1920.

8. The Emergency Powers Act, 1920,<sup>1</sup> enacts that if at any time it appears that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel or light, or the means of locomotion, to deprive the community, or any substantial portion of the community of the essentials of life, His Majesty may, by proclamation, declare that a state of emergency exists.

So long as such a proclamation remains in force, it is lawful for His Majesty in Council, by order, to make regulations for securing the essentials of life to the community, and those regulations may confer or impose on a Secretary of State, or other Government Department, or on any other persons in His Majesty's service, or acting on His Majesty's behalf, such powers and duties as His Majesty may deem necessary for the preservation of peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transport or locomotion, and for any other purposes essential to the public safety and the life of the community.

Under such regulations soldiers may be called upon to perform duties, not otherwise regarded as military duties, in order to secure the necessities of life to the community, although no actual breach of the peace has occurred, and it follows that they are entitled to use such force, and no more, as may be necessary to enable them to carry out the duties entrusted to them.

Conspiracy  
and Pro-  
tection of  
Property  
Act, 1875.

9. Under the Conspiracy and Protection of Property Act, 1875, s. 7., an offence is committed by any person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing, wrongfully and without legal authority :—

- (1) Uses violence to or intimidates such other person or his wife or children, or injures his property ; or
- (2) Persistently follows such other person about from place to place ; or
- (3) Hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or

<sup>1</sup> See page 806.

- (4) Watches or besets the house or other place where such other person resides, or works, or carries on his business, or happens to be, or the approach to such house or place; or

- (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road.

10. The Trade Disputes Act, 1906, modified the Conspiracy and Protection of Property Act, 1875, to the extent that it made it lawful for one or more persons, acting on their own behalf, or on behalf of a trade union, or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

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Trade Disputes Act, 1906, and Trade Disputes and Trade Unions Act, 1927

It is to be observed that the above-mentioned Acts did not legalise any action which went beyond the purposes defined in the last paragraph. Intimidation therefore remained illegal even though committed by persons attending nominally for the purposes of giving or obtaining information or persuading others. The Trade Disputes and Trade Unions Act, 1927, s. 3(1), made this quite clear by declaring that it is unlawful for one or more persons to attend at or near a house or place where a person resides, &c., for the lawful purposes mentioned in the Act of 1906, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place. The Act of 1927, however, extended the meaning of "intimidation" (as hitherto interpreted in the courts) by defining the expression "to intimidate" as meaning "to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependents or of violence or damage to any person or property." The expression "injury" in this definition includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

The Act of 1927 further makes it unlawful for a person or persons to watch or beset a house or place where a person resides, or the approach to such a house or place, for the purpose of inducing any person to work or to abstain from working.

11. An unlawful assembly is an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose (lawful or unlawful) in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it.<sup>1</sup>

Unlawful assembly.

The commission of an act of violence by any one or more of those assembled is not necessary to make the assembly unlawful, if its character and circumstances are such as to be calculated to alarm, not only foolish or timid people, but persons of reasonable firmness and courage.<sup>2</sup> If the assembly is for a lawful purpose and with no intention of carrying out that purpose in an unlawful manner, the

<sup>1</sup> Laws of England, vol. ix, p. 469; Digest of Criminal Law, p. 55.

<sup>2</sup> *K. v. Vincent*, 9 C. & P., 95.

**Ch. XIII** assembly is not an unlawful assembly, even though the persons assembling know that the assembly is likely to be resisted by others.<sup>1</sup>

**Example of what is and what is not an unlawful assembly.** 12. Accordingly, in the case of the Chartist Meeting at Newport in 1839, an assembly was held to be unlawful in which from 300 to 1,000 persons were gathered together, and in respect of which evidence was given that the speakers endeavoured to incite the people to disaffection and the use of physical force. No actual outrage was perpetrated, but numbers of persons armed with sticks were proved to have marched in procession, and several witnesses swore that they apprehended danger both to life and property.<sup>2</sup> On the other hand, a peaceful meeting of the Salvation Army is not an unlawful assembly and cannot be made so by the knowledge that the assembly will be resisted and a breach of the peace ensue.<sup>3</sup>

**Suppression of unlawful assemblies.** 13. The law would fall far short of what is needed for the preservation of society if it did not allow all necessary measures to be taken for dispersing or otherwise putting an end to unlawful assemblies, riots, and insurrection. The law accordingly declares that an unlawful assembly may be dispersed, although it has committed no act of violence; for it is better that individuals should be stopped before they proceed to outrage and violence; and a small amount of punishment in the first instance will probably save a great amount of crime afterwards.<sup>4</sup>

**Definition of "riot"** 14. A riot is a tumultuous disturbance of the peace by three or more persons assembling together without lawful authority<sup>5</sup> with an intent mutually to assist one another against any who oppose them, in the execution of some enterprise of a private nature, and who afterwards actually begin to execute the same in a violent and turbulent manner to the terror of the people. It is immaterial whether the act done be unlawful or not, but there must be an act.<sup>6</sup> Doing the act in a manner calculated to inspire people with terror is punishable, whether it is lawful or unlawful; but where the object of the assembly is lawful, it requires far stronger evidence of terror caused by the means used to induce a jury to return a verdict of guilty.

**Examples of riot.** 15. For example, persons assembling together on a racecourse with the intent mentioned in para. 14 and tumultuously pulling down a booth are guilty of a riot. Again, a number of persons assembling for a lawful object, such as pulling down an inclosure which has been illegally put up, will be guilty of a riot if their assembling is accompanied with circumstances of actual force or violence calculated to inspire people with terror.

**Riot Act.** 16. The first section of the Riot Act enacts that, "If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace . . . and being required or commanded by

<sup>1</sup> *Beatty v. Gillbanks*, L.R., 9 Q.B.D. 308. The principle established by this case does not appear to be affected by the later decision in *Wiss v. Dunning*, L.R., (1902) 1 K.B., 167; see Dicey, *Law of the Constitution* (6th Edn.) App. Note V., p. 448.

<sup>2</sup> *R. v. Vincent*, ante; and see *R. v. Neale*, 9 C. & P. 431 in which the law is similarly laid down by Mr. Justice Littledale.

<sup>3</sup> See note 1 above.

<sup>4</sup> Baron Alderson in *R. v. Vincent*, 9 C. & P., 94.

<sup>5</sup> A lawful gathering may become a riot if a proposal to do collectively some act of violence is agreed to and executed.

<sup>6</sup> *Hawkins*, Bk. 1, ch. lav, sec. 1; and see *R. v. Graham* 16 Cox Crim. Ca. 22.

any . . . justice, . . . by proclamation to be made in the King's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart . . . , shall, to the number of twelve or more . . . unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation," they shall be adjudged felons. Ch. XIII

17. The form of the proclamation and the mode of making it direct the justice among the rioters, or as near them as he can safely come, to command silence, and then with a loud voice to make proclamation in the following words :— Form of proclamation.

"Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies. God save the King".

18. Further, the Act provides that, if the persons so riotously and tumultuously assembled, or twelve or more of them, remain together for one hour after the proclamation, they may be seized and apprehended by any justice or person assisting him; and that if any of the persons so unlawfully assembled happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting, then the justices, constables, and persons assisting such justices and constables shall be fully indemnified for any such killing, maiming or hurting. Persons hindering the reading of the proclamation, and if the proclamation be hindered, persons having knowledge of such hindrance and not dispersing within an hour after the hindrance, are liable to the same punishment as persons who remain together for an hour after the reading of the proclamation. Effect of remaining for an hour after proclamation.

19. Every magistrate, sheriff, constable, and other peace officer is required to do all that in him lies for the suppression of a riot, and each has authority to command all other subjects of the King to assist him in that undertaking. Every man is bound, when so called upon, to yield a ready and implicit obedience, and to do his utmost to assist in suppressing any tumultuous assembly.<sup>1</sup> Suppression of riots.

20. It is important to realize that the passing of the Riot Act in no way limited such powers as the civil authorities already possessed, or rendered it illegal for them to interfere, should circumstances require it, before the proclamation has been read and an hour has elapsed.<sup>2</sup> At the same time the action of the legislature in passing the Act suggests strongly that, as a general rule, it would be extremely imprudent to use an armed force against a mob until the proclamation has been made and an hour has elapsed, except in circumstances where either the proclamation cannot be read owing to the violence of the mob, or the mob, A riot may be dispersed before the proclamation is read.

<sup>1</sup> Charge of Chief Justice Tindal to the Grand Jury in 1832, quoted in *R v. Pinner*, 5 C. & P. 262 note.

<sup>2</sup> See appendices I & II to this chapter.

**Ch. XIII** before the expiration of an hour, perpetrate or are evidently about to perpetrate some outrage amounting to felony.<sup>1</sup>

Apprehension of rioters.

**21.** There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any degree of force to protect himself, or to overcome resistance. It is, however, sometimes impracticable to attempt the apprehension of individuals without using means calculated to occasion bloodshed, and the firing on a mob can only be excused by the necessity of self-protection, or by the circumstance of the force at the disposal of the authorities being so small that the commission of some felonious outrage—such as the burning of a building, or the breaking open of a prison, or the attacking of a barrack—cannot be otherwise prevented.<sup>2</sup>

Definition of "insurrection."

**22.** An insurrection differs from a riot in this—that a riot has in view some enterprise of a private nature, while an insurrection savours of high treason, and contemplates some enterprise of a general and public nature.<sup>3</sup> An insurrection, in short, involves an intention to "levy war against the King," as it is technically called, or otherwise to act in general defiance of the government of the country.

Examples of insurrection.

**23.** For example, a determined mob assembling to pull down or burn a building belonging to their civil employers with whom they have a dispute, are engaged in a riot as soon as they have actually commenced to execute their purpose. If the object were to attack a barrack or seize a store of bombs with a view to arming themselves and making war against the government, they would be in a state of insurrection.

Suppression of insurrection.

**24.** The observations made above with respect to the duty of suppressing riots apply still more strongly to insurrections, or "riots which savour of rebellion." In such cases the use of arms may be resorted to as soon as the intention of the insurgents to carry their purpose by force of arms is shown by open acts of violence, and it becomes apparent that immediate action by the use of arms is necessary.

Distinction between unlawful assembly, riot and insurrection.

**25.** The distinction between these three kinds of gathering may be thus expressed briefly:—An unlawful assembly is an assembly which may reasonably be apprehended to cause danger to the public peace through the action of the persons constituting the assembly. As soon as an act of violence is perpetrated it may become a riot (see para. 14 above); while if the act of violence be one of a

<sup>1</sup> "The civil magistrates are left in possession of those powers which the law had given them before. If the mob collectively, or a part of it, or any individual within or before the expiration of that hour attempts or begins to perpetrate an outrage amounting to felony, to pull down a house, or by any other act to violate the law, it is the duty of all present, of whatever description they may be, to endeavour to stop the mischief and apprehend the offender"; per Lord Loughborough C.J., in the "Gordon Riots" Trial (1781), 21 Howell's State Trials, 493.

In the Six Mile Bridge case of riots in the County Clare election in 1852, an escort of two officers, two sergeants, and forty rank and file, employed to protect voters going to poll, were attacked and stoned by the mob. The soldiers fired without orders from their officers, but, as was subsequently sworn by the commanding officer, in defence of their own lives, and killed two or three of the mob. Indictments were preferred against those who fired, or were supposed to have fired, but the Bills were thrown out by the Grand Jury. The charge of Mr. Justice Perrin to the Grand Jury in this case appears virtually to ignore the riotous character and unlawful object of the mob, and the fact of the unprovoked attack on the soldiers.

<sup>2</sup> *R. v. Vincent, ante*. See also Lord Mansfield's charge on the trial of Lord George Gordon in 1781, 21 Howell's State Trials, 644. Lord George Gordon was indicted for high treason, but acquitted on the ground that his acts, in the opinion of the jury, did not amount to constructive levying of war against the Crown.

public nature, and with the intention of carrying into effect any general political purpose, it becomes an insurrection or rebellion.<sup>1</sup> **Ch. XIII**

26. The offence of taking part in a riot, or an insurrection, is independent of any additional crime which the persons assembled may either themselves commit, or of which they may be held to be guilty as principals, by reason of their forming part of the mob which commits such a crime. For example, a riot seldom takes place without the rioters breaking into houses or otherwise destroying property. An insurrection almost always involves murder or attempts to murder. All persons present at the commission of such crimes are equally principals in the breaking into houses, destroying property, murder, or attempts to murder, although at the time some of them take no actual part in the transaction at all; but practically the extreme measure of punishment is usually awarded only to the leaders.<sup>2</sup>

Additional crimes usually incident to riots and insurrection.

27. Undoubtedly the decision as to the use of force is a difficult one, but many circumstances suggest themselves which may serve as a guide to justices and officers called on to act in cases of sudden tumult. The first question they will ask themselves is "for what purpose has the mob come together?" A knowledge of its purpose usually furnishes the best clue to a determination of the time for, and mode of, forcible interference. For example, a mob assembles for the purpose of pulling down an obstacle to a footpath which has been obstructed illegally or with doubtful legality. Their proceedings may be disorderly, but their purpose may be legal, and certainly is not felonious. The probability is that as soon as they have effected their object they will disperse. In such a case the best course is to use no force, but merely to take means to identify some of the parties concerned with a view to subsequent proceedings, if necessary.

Circumstances which may guide authorities in the use of force.

Again, a meeting or procession assembles for, say, the furtherance of parliamentary reform, the abolition of an obnoxious tax, or some other political object not involving rebellion against established authority, or any intention to enforce by violence the object which they have in view. It is, of course, quite possible that excitement may prompt them to outrage, but such a meeting, so long as it commits no act of violence, should be interfered with as little as possible and no exhibition of force should take place until some violent crime has been or is about to be committed.

28. Quite different considerations apply where a mob avowedly set out to destroy the factory or property of, say, an unpopular

Further illustration.

<sup>1</sup> Baron Alderson in his charge to the Grand Jury, delivered at the Monmouth Assizes in 1839 (9 C. & P. 94 n.) cited the following observations of Mr. Justice Bayley:—"If the persons who assemble together say 'We will have what we want, whether it be according to law or not,' a meeting for such a purpose, however it may be masked, if it be really for a purpose of that kind, is illegal. If a meeting, from its general appearance, and from all the accompanying circumstances, is calculated to excite terror, alarm, and consternation, it is generally criminal and unlawful." Baron Alderson continued, "These are, as I take it, the clear principles of law, an unlawful assembly differing in this respect from a riot, that a riot must go forward to the perpetration of some act which the unlawful assembly is calculated to originate and inspire. Something must be executed in a turbulent manner to constitute a riot, but in these cases it must be some enterprise of a private nature, because if the enterprise be of a general and public nature, it savours of high treason, and there is no doubt that if you find these persons assembled together by delegates dispersed from any central jurisdiction in this kingdom, and those persons so meeting together in consequence of a delegation from a central body commit any act of violence for the purpose of carrying into effect any general political purpose, they run the risk of being charged with high treason."

<sup>2</sup> See *R. v. Howell*, 9 C. & P., 437.

**Ch. XIII** owner, arming themselves with weapons to break the doors, and showing a settled intention to carry their object into effect. In such a case their intent is felonious. They should be warned of the danger they will incur in attempting such an outrage, and the proclamation in the Riot Act should, if time allow, be read; but whether it has been read or not, and whether the hour has or has not expired, the apprehension of the ringleaders or any other repressive measures which may be necessary to prevent the actual commission of an outrage, should be effected, if possible. Troops may be summoned in case the civil authority is in danger of being overpowered, but they should not be called into action until the necessity arises for protecting life and property by armed force.

In this connection it is important to bear in mind two facts, firstly, that (although it may well be prudent to make timely provision for troops to be ready within easy distance) an actual display of armed force may, under certain circumstances, provoke a mob and thus do more harm than good; and secondly, that troops (at any rate unmounted troops) can in practice seldom intervene except by using long range firearms, the effect of which may be to kill and wound a number of innocent or comparatively innocent persons.

Further illustration.

**29.** An insurrection is, of course, a more serious matter than any riot. A mob which declares openly that it proposes to attack the constituted authorities, and which consists wholly or partially of armed men, or attempts like that of the Fenians at Chester in 1867 to seize an arsenal for the purpose of obtaining arms, cannot be too quickly dealt with, and force should repel force, care being taken to avoid any unnecessary bloodshed or injury.

Summary of law.

**30.** The conclusions deducible from the foregoing pages appear to be as follows:—

The law which demands the suppression of unlawful assemblies, riots and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression. The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime.

In the case of unlawful assembly.

**31.** Beginning with an unlawful assembly, the civil authority has power to command those present to go away, to arrest them if they do not go, and to stop others whom they see joining them.<sup>1</sup> If the parties interfered with resist, such force may be used as will compel obedience; but it would be extremely inadvisable to use any such force as would maim or injure the person resisting, unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor.

In the case of riot.

**32.** Proceeding to the case of a riot, before the proclamation required by the Riot Act is read, the same observations regarding the degree of force to be used apply as in the case of an unlawful assembly. After the proclamation has been read and an hour has elapsed, considerable force may, if necessary, be used for the purpose of dispersing the mob. If the mob is committing or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after

<sup>1</sup> Hawkins, Bk. I, ch. Ixv, sec. 11



the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force.<sup>1</sup>

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33. The existence of an armed insurrection would justify the use of any degree of force necessary effectually to meet and cope with the insurrection. In the case of insurrection.

34. Sir Charles Napier complained in his Remarks on Military Law of the hardship of imposing on an officer the obligation of deciding whether he is or is not justified in ordering his men to act. He contended that an officer ought not to be liable to trial by the ordinary courts of justice for anything he may do in executing the duty imposed upon him by the civil magistrate, *viz.*: to quell the riot.<sup>2</sup> Conclusion.

It can be answered that an officer has no greater responsibility than a civilian. Mr. Justice Littledale, in the case of *R. v. Pinney*, says:—

"Now a person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter; and if he does not act he is liable to an indictment or an information for neglect; he is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be matter for your consideration; but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace officer he has been compelled to take the office that he holds, the same rule applies, and if persons were not compelled to act according to law, there would be an end of society."

A practical answer to the complaint is also to be found in the fact that the last word so far as civil pains and penalties are concerned rests with a jury, who may be relied upon to make liberal allowances for the difficulties of persons so circumstanced, and to err, if they do err, on the side of leniency when it appears that an official, even if his action has proved excessive, acted honestly to the best of his judgment.

At the same time the following brief summary of conclusions may be useful to an officer:—

He will find that the King's Regulations (paras. 1238 to 1257) lay down certain rules as to "Duties in Aid of the Civil Power." With regard to these he must remember that, although they define his duties to superior authority so far as such duties are not incompatible with the common law, yet they do not profess, and are indeed unable, to alter the duty laid upon him by that law. There are usually two stages at which he has to exercise his judgment; first, when he is called upon to bring out his men; and secondly, when the question of firing arises

<sup>1</sup> See the appendices to this chapter.

<sup>2</sup> Quoted by Clode, *Mil. Forces*, ii, p. 153

**Ch. XIII** — With regard to the first, he must act on his own judgment if he is in possession of the facts. If it is not possible in the special circumstances for him to ascertain the facts, he must deal with the facts as represented by the civil authority.

Secondly, when his men are on the spot, and the need for action is imminent, he is probably in as good a position as the civil authority to form a cool level-headed opinion as to the trend of events: the fact that a request to take action has or has not been made must have all due weight given to it, but the receipt or non-receipt of a request cannot absolve him from his legal duty, which is to use such force and so much only as is necessary for the restoration of order and the checking of violence, but yet, at his peril, to use no excessive amount of force. Further, the force which he uses must only be the amount which is necessary to effect the immediate object before him, and he must on no account use force with a view to its deterrent effect elsewhere or in the future.

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#### APPENDIX I.

*Evidence given by the Right Hon. R. B. Haldane, K.C., M.P., Secretary of State for War, before a Select Committee on Employment of Military in cases of Disturbance. (Parl. paper 1908, H.C. 236.)*

103. *The Chairman.*—You have been so good as to come before us to state your views, and, as I understand, the views of your department, on the questions which we are appointed to investigate. I have not any *précis* at all of your evidence, so I will ask you to make your statement in any form that you please?—The material which I propose to offer for the consideration of the Committee relates simply to the general law, which is a subject not unattended with obscurity. Mr. Troup in his evidence on Tuesday, with which evidence I agree, states that in 1895 the King's Regulations were revised in consequence of some inquiries that were made at that time, and as they now stand they contain directions which are given on behalf of the commanding authorities to the military. They do not, and cannot, alter the common law. They are mere instructions to the commanding officers and the troops how to behave themselves in case they are called out, and they require to be read, consequently, as in harmony with the general law, which they do not purport in any way to alter. The general law, therefore, is the key to the situation, and the general law is, in my opinion, quite simple, although, for the reasons I will point out in a moment, there has been some misunderstanding about it. Broadly stated, there are two principles which form part of the common law of this country. The one is that every citizen is bound to come to the assistance of the civil authority when the civil authority requires his assistance to enforce law and order. That applies to the soldier, who is in no different position from anybody else. But there is a second principle which does bear upon the duty of the soldier, and that is that when you do come to the assistance of the civil authority which has requisitioned you, neither you, nor for that matter the civil authority, is entitled to use more force than is necessary in order to assert the cause of law and order. Now, the soldier is a person who is different from an ordinary citizen in this, that he is armed with a deadly weapon, and, moreover, he comes out in a military formation. The result is that if he appears unnecessarily he is apt to create an impression in the minds of those who are about of a hostile character. His very menacing appearance may lead to the very thing which it is his purpose to prevent—disturbance. For that reason, in the War Office,

we are very averse to allowing the military to be employed. We are compelled to do it; we have no choice; we have to obey the law; but we always tend to insist—and while I am there we always shall insist very strongly—on this, that we are called out legally and not illegally. We are called out illegally if we are called out under any circumstances which admit of being dealt with by a force less menacing than a military force necessarily is. There is a principle which must be borne in mind, and that is that people are taken to intend the consequences of their actions. It may be perfectly legal for the military to march up and along a certain street, but, if their doing so will unnecessarily and unjustifiably bring about a disturbance, the military may find themselves breaking the law. There are familiar cases in the books. There is one case in which somebody in the neighbourhood of the Strand owned a theatre, and he gave a performance of a very well-known play, which had the result of attracting an enormous crowd trying to get in. He was acting perfectly legally in opening his theatre and advertising the play, but he created such a disturbance by attracting the crowd that he was held liable to injunction. In the same way it has been held in the courts that if you put up a very exciting and stirring advertisement in Fleet Street and a crowd collects and blocks the pavement, you are liable. I say that by the way of illustrating that if the military, even within their rights, come upon the streets in circumstances when their doing so may create disturbance, they may be committing an offence against the law. That is a principle which I am always disposed to bear very closely in mind when dealing with the question whether they should act or not. But, subject to those qualifications, I wish to emphasize this, that the War Office has no discretion. We are in control of a number of people who are citizens as well as soldiers, and if they are requisitioned to assist the civil authority, then, if it is necessary that they should assist, and if they are required, and they cannot be done without, they have to go. That brings me to what I want to make clear here, because it is the vital point, and I do not think it is clear. It has been said that the cases show that the military have no discretion when they are called on; that, although the King's Regulations say that they must use a discretion as to what troops they employ and what weapons they use, still they have no discretion whether they will go or not, and that it is for the civil authority to say whether they are to come or not. From that proposition I emphatically dissent.

104. Are you referring to the local military authorities or to the discretion of the War Office?—I was referring primarily to the local military authorities. It would apply to both, but the case almost invariably arises in regard to the local military authorities. There is some countenance, I think, given to the doctrine which I am combating in a sentence in the King's Regulations. They were drawn with these words in them, in paragraph 949, which says that, when a requisition comes from the proper authority, the military authorities will arrange for the despatch of troops and inform the civil authorities who requisition them of their number and of the time at which they may be expected to reach their destination. Now that is ambiguous. That, to my mind, cannot alter the common law, and cannot relieve the military authorities of the obligation which is upon them, and that obligation is to judge for themselves. My view of the law, and it was the view of Lord Bowen also, whom I assisted to frame the paragraph in the Featherstone Report on the subject, which, I think, is quite unambiguous on the point, is that the civil authority has no power to use more force than is necessary, and therefore, has no power to call out the military unless they cannot get on without the military. They ought to do it by civil aid if they can. If they do call out the military, the commanding officer is in this position: an illegal command—an illegal requisition—cannot absolve him from his liability to the general

Ch. XIII — law of the land. Consequently, although the opinion of the civil magistrate is very weighty, and is a thing on which he may place a great deal of importance, it does not absolve him from his liability to the law. If he is summoned from a distance, not knowing the facts, and the civil magistrate says: "You must come and help me to put this disturbance down; I cannot do it with a civil force," he is bound, in my opinion, to go, because he does not know the facts, and he would be acting at his own risk if he did not go, and he would be committing a misdemeanour at common law if he did not give the assistance he is bound to give. But, supposing he goes and finds there is only a small disturbance, which could be put down by the ordinary police, certainly he would be committing an offence against the law if he intervened. Consequently, he must to some extent exercise his own discretion, notwithstanding the requisition of the magistrate. In nine cases out of ten the magistrate knows much better than the commanding officer can know, but there are cases in which the commanding officer is on the spot and can judge for himself and may think the magistrate is mistaken in his view of the facts. The mere authorization of the magistrate cannot, in point of law, absolve the commanding officer from doing what is illegal, because by the jurisprudence of this country everybody is taken to know the law, the commanding officer as well as anybody else; it is only judges who are allowed to say they have made a mistake about the law. But a commanding officer may say: "The question is not for me, who am at a distance and cannot know what is happening, one of law, but is one of fact; the magistrate is a better judge than I am of the circumstances, and, in point of fact, I accept his view, there being no reason to the contrary, that I ought to intervene." In that case my view is that he would be protected, not because he has not committed what would have been an offence, but that he has not had what is called in the law the *mens rea*—the guilty mind. He could not allege a mistake of law on his part, but he could allege a mistake of fact, into which he had been *bonâ fide* led by the misjudgment and action of a magistrate. That is his protection, but subject to that he has to judge for himself, like anybody else. I have gone into that at some length, because of the words in the King's Regulations, and I think I know where the mistaken impression on which these words, which are certainly ambiguous, are founded came from. In 1822 there were some very well-known riots in Lancashire, and the military were called to the assistance of the civil authorities in order to enable a warrant to be executed, and after the riots were over—more than 6 months after—an action was brought by a plaintiff called Redford against a Militia officer called Birley, and the case of *Redford v. Birley* is a great case which is reported in the State Trials in the first volume of the new series. *Redford v. Birley* was tried by Mr. Justice Holroyd and a jury, and in Mr. Justice Holroyd's summing up, there occurred certain words which have misled a good many people. Mr. Justice Holroyd said: "The only question here is whether the military were assisting the civil authority in response to a request to do so. That is all the jury have to consider." The head-note of the case—the short summary of facts at the beginning of the report—lays down that the issue that was tried was the question whether the military were rendering assistance in dispersing an unlawful assembly. Of course, if the principles of law which I have stated to the Committee are right, that left open the question whether the military authorities acted wrongly in obeying the requisition of the magistrate, and Mr. Justice Holroyd apparently says, and to anybody who read only the head-note would be taken to rule, that on that what the magistrate said was conclusive. But he did not really say that. The difficulty which has arisen has arisen from the people reading only the head-note of the case (which is, in my view, erroneous) without reading the whole of the report. If you read the report, you will find this: it is very technical

but it is well the Committee should understand what the point was. It was an action of tort—for damage for an assault—and the plea raised what was called the general issue. It was a plea of “not guilty,” which was in those days a proper plea to an action of tort, and, it enabled you to raise any relevant issue, including an issue of “not guilty by statute.” There is an Act of George II, which says that when anybody has been assisting the civil authority in executing a warrant or quelling a riot or generally enforcing the law the action must be brought within six months. If it is not brought within six months, all you have to prove is that you were assisting the civil authority, no matter whether you were wrongfully requisitioned or not. If the action is not brought within six months, you have a complete defence if you merely plead you were called out by the civil authority, and were assisting it. That issue was raised in *Redford v. Birley*, and it was that to which Mr. Justice Holroyd referred when he said: “The only question is, were they called out to assist the civil authority, not whether the civil authority were wrong in calling them out, and they wrong in coming.” When you get rid of that case, as you do when you read through the proceedings instead of pausing only at the head-note, then you will find the other authorities pretty well consistent. The law to my mind is clear that the soldier is in no different position from anybody else. He must obey the civil authority by coming to its assistance, where it is necessary that the soldier should give assistance to the civil authority, but it must be necessary that he should do so, and excess of force and an excess of display ought not to be used. The soldier is guilty of an offence if he uses that excess, even under the direction of the civil authority, provided he had no such excuse as that he was bound to take the facts, as distinguished from the law, from the civil authority. Now the officer, of course, thereby is placed in an extremely difficult position. He is in the same position as his own man is. If an officer orders his own man to fire unnecessarily, and clearly unnecessarily, the command of the officer does not absolve the private from his duty to obey the common law. On the other hand, under the law of the Army, the private is bound to obey his officer. He is, in other words, in peril of being, on the one hand, tried and shot by a court-martial, and on the other hand, of being tried and hanged by a judge and jury. But in practice it is one of those situations which is really perfectly simple. In 999 out of 1,000 cases it does not arise. People are very sensible in this country. Two principles which may come into conflict have to be reconciled, and they are reconciled by taking the case in the concrete. The result is that, while the commanding officer is bound to pay great respect to the opinion of the civil authority, and on a mere question of fact, when he comes from a distance, to accept it, until he sees that it is obviously wrong, he is not absolved, in law, from his duty not to use more force than is necessary. The result is, I think, that these words, which are doubtless founded on an impression from a misreading of the case of *Redford v. Birley*, go a little too far, and I propose to modify the language of paragraph 949 of the King's Regulations. I do not think it has misled anybody in practice. We have enforced the other view very strictly because, as I said, the War Office is very reluctant to act. The other day, for instance, at Winchester, the civil authority requisitioned the officer commanding the troops at the depot to bring them up, and the officer did not bring them up, and the civil authority complained to us. I went into the case, and I had not the smallest hesitation in approving the action of the officer commanding, and yet it was said, with some truth, that the paragraph in question says that the military authorities will arrange for the despatch of troops. They did not in that case, because they said, very sensibly: “This must be read in accordance with the common law, and not as inconsistent with it.” The Regulations cannot repeal the common law. I agree that should

Ch. XIII be made more distinct than it is at the present time. That is the statement which I wanted to put before the Committee in order to make the law perfectly clear, as I think it is.

105. *Mr. Middlebrook.*—Am I correct in assuming that the Winchester case was a case where the commanding officer was on the ground, and had the opportunity of judging whether or not necessity existed before calling out his men?—Yes, that was the essence of the case at Winchester.

106. That would differ from the case of a commanding officer at a distance who had no means of judging as to the necessity, and who I assume in your view should respond by taking his men to the locality, and, having arrived, then form his opinion?—Exactly so.

107. *The Chairman.*—Have you concluded now the statement you wished to make?—Yes.

108. *Sir Frederick Banbury.*—I should like to know whether you propose to make an alteration in the King's Regulations which you suggested. You said you were going to make an alteration?—Yes: I propose to revise the King's Regulations, to make it clear that they are in accordance with the common law. They do not purport to alter it, and could not alter it if they purported to alter it. There is no statutory authority that I know of anywhere to alter the common law by the King's Regulations, and I think it should be made perfectly clear that the two do remain consistent.

109. *Mr. Middlebrook.*—Have you any suggestion as to dealing with a difficulty which might arise in a difference of opinion as between the civil authority, on the ground of necessity, and the military authorities on the ground of non-necessity?—I do not think any suggestion is possible for dealing with it. One or other must be wrong, and each acts at his peril. So that the situation is, that while the military commanding officer will, of course attach the utmost weight to the civil authority, who is *prima facie* the best judge both of fact and law, he will remember that he is acting at his peril, and, if he forms in his mind a clear reason for dissenting from what he is told to do, he will act on it, but he will remember that there also he is acting at his peril.

110. And you see no alternative but leaving it in that position?—I see no alternative. I have considered the question whether we could codify the common law, and I have looked up the draft code drawn up in 1879 under the auspices of Lord Blackburn, but that code I think probably public opinion would demur to if it were adopted. It, as I read it, gives too great an exemption to the commanding officer from the obligation to observe the common law. It says, in fact, very much what is said in the Regulations, that he has to obey, and that may not be a good thing to lay down.

111. *Mr. Lambton.*—With regard to these King's Regulations, I think you said that that particular paragraph was regarded as mere instruction?—Yes, as mere instruction.

112. Is that regarded so by the military? Would an officer in command of a battalion, for instance, consider it as a mere instruction?—Yes, he has to obey because they are instructions from his superior officers, but he has also to obey the common law, which overrides this paragraph in cases of conflict.

113. That is an impossible position for the poor officer?—The officer is no worse off than anybody else. If you or I were called upon by a magistrate to take part in checking a disturbance with a lethal weapon we should be in an impossible position—we should be bound by the law to obey the magistrate, and bound by the law not to do what was illegal.

114. As far as I make out, you lay it down that the law is that every civilian is bound to obey this order when called upon, and that the military may judge for themselves, although they are only in the same position as an ordinary civilian?—No; the civilian must judge for himself, too.

115. But supposing he says he will not go?—Then he is tried before a court, as happened in the case of the *King v. Pinney*, at the time of the Bristol riots.

116. *Mr. Middlebrook*.—Was that a trial before a civil court?—A criminal court.

117. *Sir Frederick Banbury*.—Not a military court?—Certainly not. He would be tried before a civil court, and he would be held liable, it might be, to imprisonment for a misdemeanour for not assisting the authorities. On the other hand, if he used unnecessary violence he would be tried before a similar court and convicted. I should point out that the Army Act is very careful to say that all these provisions are to be read consistently with the general law of the land. It is only a lawful order which the commanding officer is bound to obey. The expression in the King's Regulations is "lawful command."

118. *Mr. Lambton*.—I think the second principle of the common law which you laid down was that they were not to use more force than necessary, and you pointed out that the military may act illegally, even if they march along a street and so make a display of force?—A menacing display.

119. Even if called upon by the magistrate?—It might be so.

120. If called upon, how can they possibly help making this military display?—You have a very difficult duty to perform, which the law imposes upon you, but you have to steer between the two things. The judges have laid down, over and over again, that a man is on the verge of two precipices, not one, and he has to get along, and he does get along.

121. Then you do not think it necessary to make any alteration in order to save the officer from falling over these precipices?—If you do, you will make the law go over the precipices. It is such an extreme conflict of principles, that I know no way, and I have given a great deal of consideration to it, of defining it better. We did our best in the Featherstone Report, in a passage which is classical now, which comes from the pen of Lord Bowen, who was one of the greatest masters of legal language that this country has ever seen, and no code, I think, could lay it down more clearly.

122. As head of the Army, are you satisfied that the officers under your charge have sufficient protection?—They have as much protection as the civilian. Their duty is a little more difficult, but they have as much protection as the civilian, and where they have a more difficult set of circumstances to deal with, as you are quite right in saying they have, because they must bring their troops up, the law, which is a very sensible institution, recognizes their difficulties and deals with them accordingly.

123. *Mr. Albert Stanley*.—I do not know that I am perfectly clear about all this, and in order rather to refresh my memory, I want to put a question or two. I understand you to say that the King's Regulations must harmonise with the common law, they cannot in any way override or conflict with it?—Except in certain specific cases where the Army Act says they may, and which cases do not cover dealing with riots. They cover a vast variety of cases, and in some cases dealing with the affairs of the Army they do alter the common law, but not in anything we are dealing with here.

124. I think I understood you to say if when an officer arrives with his troops he finds that the circumstances in his judgment have not warranted the calling out of the military, he has the discretion not to act?—Yes; he commits a crime if he does act in that case.

125. *Mr. Curran*.—In regard to an answer you have just given to Mr. Stanley, the manual of military law, issued from the War Office in 1907, on page 211—and this is the present King's Regulations—gives a summary of the law of riot and insurrection, and in the third paragraph you will find it describes an unlawful assembly thus: "An unlawful

**Ch. XIII** assembly is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger public peace and raise fears of jealousies among the King's subjects, as where great numbers complaining of a common grievance meet together armed in a warlike manner." While we are desirous of having the present Regulations altered, there are some of us here prepared to prove that the present Regulations have been absolutely violated, and that people have deliberately committed murder. I say that with all due respect, that is to say, if these are the Regulations, inasmuch as men and women have been shot down where no unlawful assembly in accordance with this description has taken place at all?—You must know that what you are quoting from is not the King's Regulations, but a manual of military law, which has been compiled to collect the law in a convenient form. The passage you have quoted represents a very authoritative statement of the common law taken from a book of great fame—Hawkins' Pleas of the Crown—but it is a very old book, and "armed in a warlike manner" means a warlike manner in law, and not according to our military notions of it. Coming on with sticks and stones would be in a warlike manner for the purposes of this passage. It must be interpreted in accordance with the fact that it is taken from a book which was written a great many generations ago.

126. Coming back to the King's Regulations, page 64, paragraph 273, refers to duties in aid of the civil power?—I have not the same book. I have the 1908 edition, and you have the 1901 edition.

127. Is there any alteration since?—Yes, because you have the edition of 1901, which has been recast. For instance, my paragraph is 948, and I should have to compare the two. That edition is not in force now.

128. This has been altered?—I cannot tell how much it has been altered unless I compare it, but it is always being recast, and it is in a different place in the book, and probably has been altered.

129. Has the calling out of the military up to now been based upon this paragraph?—Will you read the paragraph?

130. "When troops are called out in aid of the civil power at home, the General Officer Commanding the district, or the officer commanding the station to whom application is made for assistance, is immediately to report the fact by telegraph to the War Office. The officer commanding the unit will report daily in writing to the War Office, as well as to the officer commanding the station from which he has been despatched in the prosecution of the service in which he is employed"?—It is now verbally altered, but substantially it is the same.

131. I mentioned the matter to Mr. Troup, of the Home Office. We very much fear that these conditions as laid down here, if they are in operation in the new issue, have not been carried out in regard to four separate cases that have occurred in recent years?—In what respect not carried out?

132. The War Office has not been put in possession of the information required by this paragraph?—I think in all cases, so far as I know, we enforce strictly the substance of what you have read.

133. We are now on the general principle, but let me cite a case. The Lord Mayor, the chief magistrate of Belfast, requisitioned the troops through the Lord Lieutenant, and when the case was raised in the House, as you will remember, Mr. Birrell, the Secretary of State, had to reply to the questions put in regard to the presence of the troops in the streets of Belfast, and on one occasion you undertook to give your views, and your views, if I remember correctly, were that you were not responsible for the presence of the troops in Belfast?—I do not think I said that altogether, because I am responsible to Parliament for everything that soldiers do, but what I said was this: The duty of the officer commanding is, first of all, if he is called upon by the civil authority, to go to the assistance of the civil authority. *Primum facit*



that is so. When he gets there he must judge for himself whether he is contravening the law by rendering the assistance, or whether he is only doing his duty. He reports to us immediately afterwards and not before, what he has done, because, if he delayed it by making a report beforehand, and getting our advice, we could not tell. His duty is to act on the spot like any other citizen, but he reports to us without any delay as soon as he can detach himself from his work, and puts us in possession of what has happened, and then we should judge, and we should censure him if we thought he had done wrong, and approve him if we thought he had done right.

134. According to the present Regulations, it is laid down specifically that the Riot Act must be read and a certain time elapse before any firing takes place?—No; that is another misconception of the law. The effect of reading the Riot Act is that if the mob does not disperse within an hour, everybody there is guilty of felony, and when people are guilty of felony, and felons will not disperse, or submit to capture, they are liable to be shot, and, therefore, an hour after the Riot Act has been read, it is absolutely lawful, if you cannot stop the felony in any other way, to shoot the people there. That is an additional protection to the military, but it does not prevent the military from facing the possibility of firing on the people before the Act is read. If the people are going about setting fire to houses, and murdering innocent passers-by (I do not say they do do it), it would then be the duty of the military, if the police could not do it, to stop it, even by shooting them down.

135. If the mob was committing through their riotous conduct murder or injury to persons or property, the military are justified in using arms?—They are, and at once, if it cannot be stopped without their intervention.

136. But injury both to persons and property is the only justification for the use of arms, even under the present Regulations?—It is impossible to say that it must be to both persons and property. For instance, one of the most serious offences known to the law is arson, the firing of buildings, which is felony. If you find people committing arson and you cannot stop it in any other way, although they may not be trying to kill anybody, the duty of the military would be, if they could not stop them otherwise, to shoot them down, even though the Riot Act had not been read. The military would be acting at their peril if they did it without the order of a magistrate, but it would be their clear duty, as it would be the duty of any other citizen.

137. We are taking up, perhaps, a partial position in speaking for the section affected in the civil world. What we want to get at is that violence has always broken out after the presence of the military, that is to say, violence of a serious character?—I am with you to this extent, that I think the calling out of the military unnecessarily, very often leads, or may lead, to a breach of the law, by making an unnecessary demonstration which incites and provokes the public, and that is a view on which the War Office not only in my time, but always of late years, have acted consistently and strongly. We hold the military ought not to be called out except in the last resort.

138. Except when the police authorities say they are absolutely unable to cope with the local conditions?—That is it.

139. We had the spectacle in Belfast of the police going on strike because the military went there?—If the police strike, that does not justify the military in not coming up.

140. The military were "blacklegging" by coming?—It may be the fault of the police. They may have broken their contracts for the best of reasons, but still there had to be forces there sufficient to preserve law and order, and if the police will not or do not act, for whatever reason, the military are bound to obey the law. It is not really an individual question: it is a question in which the law of

**Ch. XIII** England is consistently and unswervingly Socialistic—the good of the State and of the community is preferred to the good of the individual, and the individual is even to be shot down if his interests conflict with the interest of the State.

141. I take it from your statement this morning, which is very clear and definite, that the department has under consideration the alteration of certain of the King's Regulations?—Yes, to make clear that they are to be read consistently with the law, and not inconsistently, and I agree that those words “will arrange” have given rise to misunderstanding. In my knowledge it has been misunderstood by the soldiers. It says the military authorities “will arrange” for the despatch of the troops whenever they get the requisition. The other day the officer commanding at Winchester refused to “arrange,” and he was on the spot and made up his mind that the mayor was wrong, and in my opinion that officer acted with great discretion, and I approved his conduct, although it looks as if he acted inconsistently with the King's Regulations, and I am not sure he did not, but he obeyed the common law.

142. When considering the revising of the Regulations would it be possible to provide for an independent expert to be placed on the spot prior to the military being permitted to be called out?—No. These things, when they happen at all, happen with the utmost suddenness and swiftness, and such an expert as you speak of it would be almost impossible to find. He would have to be a combination of lawyer, soldier, and I do not know what. He would be a very exceptional person, and I doubt whether anybody exists who would be markedly better than the kind of person you generally have on the spot. You have to do the best you can.

143. I quite understand the difficulty; but the point which affects us very seriously in this case is that the local magistrate, or magistrates, in a state of panic, when there is absolutely no reason for it, make immediate applications for military assistance. When people like ourselves are on the spot and could control the people and keep them from creating injury to other persons or property, they get into a panic and make application, and the military come on the spot, which simply prevents the possibility of our keeping the peace. That has occurred in four cases where I have been associated with the business myself?—It has occurred both ways. In the Gordon riots the weakness of the magistrates and the timidity of the authorities led to the sacking of a great part of London; and in the Bristol riots the want of decision of both authorities led to enormous damage being done to the city. No doubt, on the other hand, there are cases, such as you indicate, where people have lost their heads and great mischief has occurred from the premature calling in of the military. All we can do is to lay down in the clearest way what the law is, and give the clearest instructions to the officers to use their own discretion, and there is a growing tendency in the minds of the average commanding officers against using their troops if it possibly can be avoided. We want the Army to be a popular institution, and not a menace to civil liberty.

144. *Mr. Devlin*.—You say it is not necessary to read the Riot Act before firing takes place in the case of a riot?—It is not necessary; no.

145. But of course the Riot Act is, in 99 cases out of 100, read?—It is for the protection of the magistrate and military—an additional protection.

146. The Riot Act, of course, could only be heard by a comparatively small number of people who are engaged in a riot?—Yes, not by very many. They generally know it is being read—they are told.

147. Do not you think it would be very desirable when the Riot Act is read, that some bugle should be sounded or some notice given to the people who cannot hear the Riot Act?—They always are informed. I have known of no case of a riot in which it has not been

known that the Riot Act is being read, as the magistrate is seen with something in his hand, and they could not hear it if he did read it ever so distinctly, but they see the document read, and they think they will be shot down at once, and the lawful part of them disperse; it is the riotous part that remains.

148. In the recent case of Belfast, two perfectly innocent people were shot down, who did not hear the Riot Act read, and did not know it was read?—It always happens when firing takes place, in my opinion, that the innocent suffer rather than the guilty. When I was sitting on the Featherstone Commission I remember hearing the case of a Sunday-school teacher who, one-quarter of a mile off up in the hills, got a bullet through his two thighs; he was merely looking on.

149. For that reason do not you think that before the military fire, and after the Riot Act is read, or even if the Riot Act is not read, when the military authorities make up their minds to order the men to fire, some better intimation ought to be given to the people than simply the holding of a document in the hand of an officer, and a more or less dumb show taking place?—In my experience of these cases and from what I have read of them—of course, I have not seen them, but have investigated a good many—they always know the Riot Act has been read; and, moreover, if you put by law some interval of time between something which is done and the firing, the whole mischief might have occurred that you were there to prevent. For instance, at Featherstone, if the firing had not taken place, the little detachment of soldiers and the mine manager would have been thrown down the pit. We came clearly to that conclusion. It was not the rioting of peaceable men on the spot, but of a lot of rowdies from round about who had congregated.

150. *Mr. Curran*.—It is an opportunity for the class of rowdy that may be there?—That is it. It is an opportunity for evil-disposed people.

151. *Mr. Devlin*.—And the evil-disposed persons generally get away and the innocent people suffer?—I will not say generally, but it does happen. I remember one sturdy miner at Featherstone of a riotous character got shot through the knee, and when they said, "Poor man, we must take you to the doctor," he said, "Not before I know who is going to pay the bill." That is the spirit of them.

152. Do not you think it desirable to use blank cartridge first of all, after the Riot Act is read?—I think it is most undesirable, because the mob get it into their minds that you have nothing but blank cartridge, and they come on and get killed. The military authorities say: "We are here, and if we use our firearms, it is to kill." That is why we demur to being called out except in the last and most perilous necessity. If the mob get the impression we are there with only blank cartridge the result will be bloodshed galore.

153. I do not know if you know about the Riots Commission, which held a sitting in Belfast, under the presidency of Mr. Justice Day. That Commission recommended in its Report: "It has been made abundantly clear by facts that for the primary and all-important duty of preserving order, the rifle is worse than useless, and that its efficiency as a weapon for the restoration of order is very questionable; but on the other hand, in every instance in which the baton was used with judgment (in the riots of 1886) and determination, whether for the preservation or restoration of order, it proved to be a thoroughly reliable and effective weapon." It was further held that "the rifle has the following serious disadvantages: Its range with ball cartridge made it excessively dangerous to inoffensive people, and its use ought, in our opinion, to be absolutely prohibited for police purposes in towns"? If I may say so, I entirely agree with that, and I think riots should be put down wherever possible by special constables with batons and not by the military. We do not exist for that purpose.

154. When the military authorities were requisitioned for the use of military force in the case of civil disturbance, you stated in Win-

**Ch. XIII** chester the military authorities refused, and you also said they were quite right in refusing?—In that particular case.

155. One is naturally inclined to draw the conclusion that it is not fair to place the entire responsibility upon one man, the Mayor of the city, in determining whether the military authorities ought to be brought out or not. The judgment of the officer in Winchester proved that it is not right to give him full power to requisition the military. Do not you think there ought to be a consultation, so that the individual decision of one man should not be responsible for calling out the military—a consultation of the magistrates or City Council, or some body in a responsible position, as well as the individual who has the power at present?—The difficulty is that while they are consulting Rome might be burning; you have to act at once.

156. You know that the Mayor of a city does consult someone?—He does.

157. He does not act wholly on his own responsibility?—But his chance of stopping the thing must be by immediate and prompt action; you must bear that in mind.

158. It would be as easy to consult half-a-dozen people promptly—perhaps people who had a larger local knowledge than one individual who, perhaps, may be excited?—If you laid that down, it might lead to a delay of one or two hours before he took action, and great misery and loss of life and destruction of property might be the result. I think in these cases, which are all cases of urgency, you ought to leave people free, telling them what the law is and telling them what their duty is.

159. *Mr. Albert Stanley*.—Would not consultation also lead to divided authority and divided responsibility?—Yes. Divided authority is always awkward in this way: It is much better to have one man whom you can hang, if necessary.

160. I take it, if the magistrate or mayor is responsible for calling in the military, an officer becomes responsible if he acts, knowing all the circumstances?—That is it.

161. *Mr. Lambton*.—Supposing the military are there—I am not considering whether they are properly or improperly called out—it is the duty of the officer to look after and protect his own men, as well as to quell the disturbance. Supposing his men are being assaulted by stones, and the lives of his own soldiers are in danger, he may act then independent of any other consideration?—Yes, using just sufficient force to repel the assault. Of course, you cannot judge very closely.

162. *Mr. Albert Stanley*.—The whole of the circumstances of these cases are reported to you?—Yes.

163. Eventually you have a full report of the whole thing?—Yes.

164. And you are able to review exactly what has taken place?—Yes.

165. And you can apportion the responsibility?—Yes.

166. And put on a penalty even?—Yes.

167. *The Chairman*.—I think the Committee will understand from the evidence you have been good enough to give us that first of all you lay the greatest possible stress upon the unwillingness of the War Office and the military authorities to permit the use of military forces except in cases of grievous necessity. You lay great stress upon that, as was the case with Mr. Troup, representing the view of the Home Office the other day, and the Committee may take it that the War Office and the Home Office are entirely in agreement?—Entirely in agreement.

168. The civil and military authority take the same view?—Yes.

169. With regard to the question just raised by Mr. Devlin as to consultation on the part of the civil authorities before calling upon the military to give assistance or to take action, I understand that you also agree with what Mr. Troup laid before us and emphasized strongly, that it is not desirable to diffuse authority in these matters, but that

it is better on the whole that one individual should be, as far as possible, responsible?—I am of that opinion. Somebody may have to act promptly and fearlessly, and it would be his duty to do so, and the responsibility must rest with him.

Ch. XIII  
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## APPENDIX II.

*Extract from Report of Committee on Featherstone Riot (Parl. papers 1893-94, C. 7234).*

The following summary of the law as to the duties of soldiers in case of riot was given in their Report by the Committee who inquired into the facts of the Featherstone Riots in 1893. The Report gains weight from the fact that the Committee was presided over by Lord Bowen. It will be seen that this statement of the law is in complete accord with the present chapter:—

“By the law of this country every one is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained.

“The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them. The riotous crowd at the Ackton Hall Colliery was one whose danger consisted in its manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises. It was a crowd accordingly which threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this. The necessary prevention of such outrage on person and property justifies the guardians of the peace in the employment against a riotous crowd of even deadly weapons.

“Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law. A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and, in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanour.

“The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance or defines beforehand every contingency that may arise. One salutary practice is that a magistrate should accompany the troops. The presence of a magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance.

**Ch. XIII** They know nothing, probably, of the locality, or of the special circumstances. They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But, although the magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence.

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters depends, as we have said, on the necessities of the case. Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists.

"With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony; and on this ground to afford a statutory justification for dispersing a felonious assemblage, even at the risk of taking life. In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired. No justification for their firing can therefore be rested on the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case. But the fact that an hour had not expired since its reading did not incapacitate the troops from acting when outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force. The justification of Captain Barker and his men must stand or fall entirely by the common law. Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime? In doing it did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide. An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death. The legal reason is, not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence. The reason is that the soldier who fired has done nothing except what was his strict legal duty."

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#### APPENDIX III.

*Opinion of Law Officers (Aug. 18th, 1911) on duty of soldiers called upon to assist the police.*

A soldier differs from the ordinary citizen in being armed and subject to discipline; but his rights and duties in dealing with crime are precisely the same as those of the ordinary citizen. If the aid of the

military has been invoked by the police, and the soldiers find that a situation arises in which prompt action is required, although neither Magistrates nor Police are present or available for consultation, they must act on their own responsibility. They are bound to use such force as is reasonably necessary to protect premises over which they are watching, and to prevent serious crime or riot. But they must not use lethal weapons to prevent or suppress minor disorder or offences of a less serious character, and in no case should they do so if less extreme measures will suffice. Should it be necessary for them to use extreme measures they should, whenever possible, give sufficient warning of their intention.

Ch. XIII  
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(Signed) RUFUS D. ISAACS.  
JOHN SIMON.

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## CHAPTER XIV

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### THE LAWS AND USAGES OF WAR ON LAND

**This chapter was revised in 1936, and re-issued  
as Amendments (No. 12) (*q.v.*).**



## APPENDIX 1.

INTERNATIONAL DECLARATION RENOUNCING THE USE, IN TIME OF WAR, OF  
EXPLOSIVE PROJECTILES UNDER 400 GRAMMES WEIGHT.

*Signed at St. Petersburg, November 29, 1868.  
December 11,*

(Translation<sup>1</sup>.)

*Déclaration.*

Sur la proposition du Cabinet Impérial de Russie, une Commission Militaire Internationale ayant été réunie à St. Pétersbourg, afin d'examiner la convenance d'interdire l'usage de certains projectiles en temps de guerres entre les nations civilisées, et cette Commission ayant fixé d'un commun accord les limites techniques où les nécessités de la guerre doivent s'arrêter devant les exigences de l'humanité, les Soussignés sont autorisés par les ordres de leurs Gouvernements à déclarer ce qui suit:

Considérant que les progrès de la civilisation doivent avoir pour effet d'atténuer autant que possible les calamités de la guerre;

Que le seul but légitime que les Etats doivent se proposer durant la guerre est l'affaiblissement des forces militaires de l'ennemi;

Qu'à cet effet, il suffit de mettre hors de combat le plus grand nombre d'hommes possible;

Que ce but serait dépassé par l'emploi d'armes qui aggraveraient inutilement les souffrances des hommes mis hors de combat, ou rendraient leur mort inévitable;

Que l'emploi de pareilles armes serait dès lors contraire aux lois de l'humanité;

Les Parties Contractantes s'engagent à renoncer mutuellement, en cas de guerre entre elles, à l'emploi par leurs troupes de terre ou de mer, de tout projectile d'un poids inférieur à 400 grammes qui serait ou explosible ou chargé de matières fulminantes ou inflammables.

Elles inviteront tous les Etats qui n'ont pas participé par l'envoi de Délégués aux délibérations de la Commission Militaire Internationale réunie à St. Pétersbourg à accéder au présent engagement.

Cet engagement n'est obligatoire que pour les Parties Contractantes ou Accédantes en cas de guerre entre

*Declaration.*

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations, and that Commission, having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows:—

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg, by sending Delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the Contracting or Acceding Parties thereto, in case of war

<sup>1</sup> Hague Conference, 1907, *Actes*, Vol. I, p. 58.

<sup>2</sup> Neutrality Convention, art 18, para. 3.

<sup>3</sup> This translation, as well as those of the Declarations and Conventions which follow, was issued officially.

**Ch. XIV** deux ou plusieurs d'entre elles:  
— il n'est pas applicable vis-à-vis  
de Parties non-Contractantes ou qui  
n'auraient pas accédé.

Il cesserait également d'être obli-  
gatoire du moment où, dans une  
guerre entre Parties Contractantes ou  
Accédantes, une partie non-Con-  
tractante ou qui n'aurait pas accédé  
se joindrait à l'un des belligérants.

Les Parties Contractantes ou Accé-  
dantes se réservent de s'entendre  
ultérieurement toutes les fois qu'une  
proposition précise serait formulée  
en vue des perfectionnements à  
venir que la science pourrait apporter  
dans l'armement des troupes, afin de  
maintenir les principes qu'elles ont  
posés et de concilier les nécessités de  
la guerre avec les lois de l'humanité.

Fait à St. Pétersbourg, le <sup>vingt-neuf</sup> Novembre

onze  
Décembre mil huit cent soixante-huit.

between two or more of themselves:  
it is not applicable with regard to  
non-Contracting Parties, or Parties  
who shall not have acceded to it.

It will also cease to be obligatory  
from the moment when, in a war  
between Contracting or Acceding  
Parties, a non-Contracting Party or a  
non-Acceding Party shall join one of  
the belligerents.

The Contracting or Acceding  
Parties reserve to themselves to come  
hereafter to an understanding when-  
ever a precise proposition shall be  
drawn up in view of future improve-  
ments which science may effect in  
the armament of troops, in order to  
maintain the principles which they  
have established, and to conciliate  
the necessities of war with the  
laws of humanity.

Done at St. Petersburg, the  
twenty-ninth of November, one thou-  
sand eight hundred and sixty-eight

Here follow the signatures of the plenipotentiaries of:—

Great Britain.  
Austria-Hungary.  
Bavaria.  
Belgium.  
Denmark.  
France.  
Greece.  
Italy.  
Netherlands.  
Persia.

Portugal.  
Prussia and North German Con-  
federation.  
Russia.  
Sweden and Norway.  
Switzerland.  
Turkey.  
Würtemberg.

Brazil acceded in 1869.

## APPENDIX 2.

## INTERNATIONAL DECLARATION RESPECTING EXPANDING BULLETS.

*Signed at The Hague 29th July, 1899.*

(Translation.)

*Déclaration.*

LES Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Petersbourg du 29 Novembre (11 Décembre), 1868.

Déclarent;

Les Puissances Contractantes s'interdisent l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

*Declaration.*

THE Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare that:

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions.

The present Declaration is only binding for the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherlands Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherlands Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

**Ch. XIV** En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

Here follow the signatures of the plenipotentiaries of:—

Belgium.  
Denmark.  
Spain.  
Mexico.  
France.  
Greece.  
Montenegro.  
Netherlands.

In faith of which the Plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherlands Government, and of which copies, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

Persia.  
Rumania.  
Russia.  
Siam.  
Sweden and Norway.  
Turkey.  
Bulgaria.

The following States subsequently acceded:

Great Britain.  
Austria-Hungary.  
China.  
Germany.  
Italy.  
Nicaragua.

Portugal.  
Japan.  
Luxemburg.  
Servia.  
Switzerland.

### APPENDIX 3.

#### INTERNATIONAL DECLARATION RESPECTING ASPHYXIATING GASES.

*Signed at The Hague, 29th July, 1899.*

(Translation.)

##### *Déclaration.*

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre), 1868,

Déclarent:

Les Puissances Contractantes s'interdisent l'emploi de projectiles qui ont pour but unique<sup>1</sup> de répandre des gaz asphyxiants ou délétères.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

##### *Declaration.*

THE Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare that:

The Contracting Powers agree to abstain from the use of projectiles the object<sup>1</sup> of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents shall be joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

<sup>1</sup> The word *unique* has been overlooked in the translation, which should read "the *sole* object of which" and not "the object of which."

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers can adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Government of the Netherlands, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Declaration, and affixed their seals thereto.

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be sent by the diplomatic channel to the Contracting Powers.

Here follow the signatures of the plenipotentiaries of:—

Belgium.  
Denmark.  
Spain.  
Mexico.  
France.  
Greece.  
Montenegro.  
Netherlands.

Persia.  
Portugal.  
Rumania.  
Russia.  
Siam.  
Sweden and Norway.  
Turkey.  
Bulgaria.

The following States subsequently acceded:

Great Britain.  
Austria-Hungary.  
China.  
Germany.  
Italy.

Japan.  
Luxemburg.  
Nicaragua.  
Servia.  
Switzerland.

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## APPENDIX 4.

## INTERNATIONAL CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMIES IN THE FIELD.

*Signed at Geneva, 6th July, 1906.**(British Ratification deposited at Berne, 16th April, 1907.)**(Translation.)**Convention pour l'Amélioration du Sort des Blessés et Malades dans les Armées en Campagne.*

SA MAJESTÉ le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande, Empereur des Indes;

(Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries to the Conference.)

Également animés du désir de diminuer, autant qu'il dépend d'eux, les maux inséparables de la guerre et voulant, dans ce but, perfectionner et compléter les dispositions convenues à Genève, le 22 août, 1864, pour l'amélioration du sort des militaires blessés ou malades dans les armées en campagne;

Ont résolu de conclure une nouvelle Convention à cet effet, et ont nommé pour leurs Plenipotentiaries, savoir:

(Here follows the list of Plenipotentiaries.)

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

CHAPITRE PREMIER.—*Des Blessés et Malades.*

## Article Premier.

Les militaires et les autres personnes officiellement attachées aux armées, qui seront blessés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Toutefois, le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

## Art. 2.

Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés ou malades d'une armée tombés au pouvoir de l'autre belligérant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

*Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.*

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India;

(Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries to the Conference.)

Being equally animated by the desire of mitigating, as far as possible, the evils inseparable from war, and desiring, with this end in view, to improve and to complete the arrangements agreed upon at Geneva on the 22nd August, 1864, for the amelioration of the condition of wounded or sick soldiers in armies in the field;

Have resolved to conclude for this purpose a new Convention, and have named as their Plenipotentiaries, that is to say:

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows:

CHAPTER I.—*The Wounded and Sick.*

## Article 1.

Officers and soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick by the belligerent in whose power they may be, without distinction of nationality.

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them.

## Art. 2.

Except as regards the treatment to be provided for them in virtue of the preceding Article, the wounded and sick of an army who fall into the hands of the enemy are prisoners of war, and the general provisions of international law concerning prisoners are applicable to them.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles; ils auront, notamment, la faculté de convenir:

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers;

De remettre à un État neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'État neutre de les internier jusqu'à la fin des hostilités.

#### Art. 3.

Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

#### Art. 4.

Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, &c., qui seront trouvés sur les champs de bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

#### Art. 5.

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient; in particular they will be at liberty to agree—

To restore to one another the wounded left on the field after a battle;

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery;

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities.

#### Art. 3.

After each engagement the Commander in possession of the field shall take measures to search for the wounded, and to insure protection against pillage and maltreatment both for the wounded and for the dead.

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated.

#### Art. 4.

As early as possible each belligerent shall send to the authorities of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him.

The belligerents shall keep each other mutually informed of any internments and changes, as well as of admissions into hospital and deaths among the wounded and sick in their hands. They shall collect all the articles of personal use, valuables, letters, &c., which are found on the field of battle or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

#### Art. 5.

The competent military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who respond to the appeal special protection and certain immunities.

**Ch. XIV CHAPITRE II.—Des Formations et Etablissements Sanitaires.**

**Art. 6.**

Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

**Art. 7.**

La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

**Art. 8.**

Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6 :

1°. Le fait que le personnel de la formation ou de l'établissement est armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés ;

2°. Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier ;

3°. Le fait qu'il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versées au service compétent.

**CHAPITRE III.—Du Personnel.**

**Art. 9.**

Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance ; s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n° 2.

**Art. 10.**

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera

**CHAPTER II.—Medical Units and Establishments.**

**Art. 6.**

Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents.

**Art. 7.**

The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy.

**Art. 8.**

The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Article 6 :—

1. That the personnel of the unit or of the establishment is armed, and that it uses its arms for its own defence or for that of the sick and wounded under its charge.

2. That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels furnished with an authority in due form.

3. That weapons and cartridges taken from the wounded and not yet handed over to the proper department are found in the unit or establishment.

**CHAPTER III.—Personnel.**

**Art. 9.**

The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the Chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Article 8 (2).

**Art. 10.**

The personnel of Voluntary Aid Societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding Article, provided always that the first-



soumis aux lois et règlements militaires.

Chaque État doit notifier à l'autre soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

#### Art. 11.

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

#### Art. 12.

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière.

#### Art. 13.

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

mentioned personnel shall be subject to military law and regulations.

Each State shall notify to the other, either in time of peace or at the commencement of, or during the course of hostilities, but in every case before actually employing them, the names of the Societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies.

#### Art. 11.

A recognized Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

A belligerent who accepts such assistance is bound to notify the fact to his adversary before making any use of it.

#### Art. 12.

The persons designated in Articles 9, 10, and 11, after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction.

When their assistance is no longer indispensable, they shall be sent back to their army or to their country at such time and by such route as may be compatible with military exigencies.

They shall then take with them such effects, instruments, arms, and horses as are their private property.

#### Art. 13.

The enemy shall secure to the persons mentioned in Article 9, while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army.

### CHAPITRE IV.—Du Matériel.

#### Art. 14.

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades; la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

### CHAPTER IV.—Material.

#### Art. 14.

If mobile medical units fall into the hands of the enemy they shall retain their material, including their teams, irrespectively of the means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick. It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

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## Art. 15.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

## Art. 16.

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.

## Art. 15.

The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick.

Nevertheless, the Commanders of troops in the field may dispose of them, in case of urgent military necessity, provided they make previous arrangements for the welfare of the wounded and sick who are found there.

## Art. 16.

The material of Voluntary Aid Societies which are admitted to the privileges of the Convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war.

CHAPITRE V.—Des Convois  
d'Evacuation.

## Art. 17.

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes:

1°. Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2°. Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

## CHAPTER V.—Convoys of Evacuation.

## Art. 17.

Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions:—

1. A belligerent intercepting a convoy may break it up, if military exigencies demand, provided he takes charge of the sick and wounded who are in it.

2. In this case, the obligation to send back the medical personnel, provided for in Article 12, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy, and furnished with an authority in due form to that effect.

The obligation to restore the medical material, provided for in Article 14, shall apply to railway trains and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats.

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoys, shall be subject to the general rules of international law.

CHAPITRE VI.—*Du Signe Distinctif.*CHAPTER VI.—*The Distinctive Emblem.* Ch. XIV

## Art. 18.

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par intervention des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

## Art. 19.

Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

## Art. 20.

Le personnel protégé en vertu des articles 9, alinéa 1<sup>er</sup>, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.

## Art. 21.

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire. Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

## Art. 22.

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

## Art. 18.

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armies.

## Art. 19.

With the permission of the competent military authority this emblem shall be shown on the flags and armlets (brassards), as well as on all the material belonging to the Medical Service.

## Art. 20.

The personnel protected in pursuance of Articles 9 (paragraph 1), 10, and 11 shall wear, fixed to the left arm, an armlet (brassard) with a red cross on a white ground, delivered and stamped by the competent military authority, and accompanied by a certificate of identity, in the case of persons who are attached to the medical service of armies, but who have not a military uniform.

## Art. 21.

The distinctive flag of the Convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the Convention, and with the consent of the military authorities. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross.

## Art. 22.

The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Article 11 shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

The provisions of the second paragraph of the preceding Article are applicable to them.

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Art. 23.<sup>1</sup>

L'emblème de la croix rouge sur fond blanc et les mots *Croix-Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

Art. 23.<sup>1</sup>

The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the Convention.

CHAPITRE VII.—*De l'Application et de l'Exécution de la Convention.*

## Art. 24.

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

CHAPTER VII.—*Application and Carrying out of the Convention.*

## Art. 24.

The provisions of the present Convention are only binding upon the Contracting Powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent Powers is not a party to the Convention.

## Art. 25.

Les commandants en chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

## Art. 25.

The Commanders-in-chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

## Art. 26.

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

## Art. 26.

The Signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population.

CHAPITRE VIII.—*De la Répression des Abus et des Infractions.*Art. 27.<sup>1</sup>

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment, dans un but commercial,

CHAPTER VIII.—*Prevention of Abuses and Infractions.*Art. 27.<sup>1</sup>

The Signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by Societies other than those which are entitled to do so under the present Convention

<sup>1</sup> Great Britain signed the Convention under reserve of this article. See, however, para. 210, footnote 3.

par le moyen de marques de fabrique ou de commerce.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction.

#### Art. 28.<sup>1</sup>

Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix-Rouge par des militaires ou des particuliers non protégés par la présente Convention.

Ils se communiqueront, par l'intermédiaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

#### *Dispositions Générales.*

##### Art. 29.

La présente Convention sera ratifiée aussitôt que possible. Les ratifications seront déposées à Berne.

Il sera dressé du dépôt de chaque ratification un procès-verbal dont une copie, certifiée conforme sera remise par la voie diplomatique à toutes les Puissances contractantes.

##### Art. 30.

La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du dépôt de sa ratification.

##### Art. 31.

La présente Convention, dûment ratifiée, remplacera la Convention du 22 août 1864 dans les rapports entre les États contractants.

and in particular for commercial purposes as a trade-mark or trading mark. **Ch. XIV**

The prohibition of the employment of the emblem or the names in question shall come into operation from the date fixed by each legislature, and at the latest five years after the present Convention comes into force. From that date it shall no longer be lawful to adopt a trade-mark or trading mark contrary to this prohibition.

#### Art. 28.<sup>1</sup>

The Signatory Governments also undertake to adopt, or to propose to their legislative bodies, should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts of pillage and maltreatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, of the improper use of the Red Cross flag and armlet (brassard) by officers and soldiers or private individuals not protected by the present Convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present Convention.

#### *General Provisions.*

##### Art. 29.

The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at Berne.

When each ratification is deposited a *procès-verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the Contracting Powers.

##### Art. 30.

The present Convention shall come into force for each Power six months after the date of the deposit of its ratification.

##### Art. 31.

The present Convention, duly ratified, shall replace the Convention of the 22nd August, 1864, in relations between the Contracting States.

<sup>1</sup> Great Britain signed the Convention with reserve of this article. See para. 180, footnote 3.

**Ch. XIV** La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

The Convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present Convention.

**Art. 32.**

La présente Convention pourra, jusqu'au 31 décembre prochain, être signée par les Puissances représentées à la Conférence qui s'est ouverte à Genève le 11 juin 1906, ainsi que par les Puissances non représentées à cette Conférence qui ont signé la Convention de 1864.

Celles de ces Puissances qui, au 31 décembre 1906, n'auront pas signé la présente Convention, resteront libres d'y adhérer par la suite. Elles auront à faire connaître leur adhésion au moyen d'une notification écrite adressée au Conseil fédéral suisse et communiquée par celui-ci à toutes les Puissances contractantes.

Les autres Puissances pourront demander à adhérer dans la même forme, mais leur demande ne produira effet que si, dans le délai d'un an à partir de la notification au Conseil fédéral, celui-ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes.

**Art. 33.**

Chacune des Parties contractantes aura la faculté de dénoncer la présente Convention. Cette dénonciation ne produira ses effets qu'un an après la notification faite par écrit au Conseil fédéral suisse; celui-ci communiquera immédiatement la notification à toutes les autres Parties contractantes.

Cette dénonciation ne vaudra qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui restera déposé dans les archives de la Confédération suisse, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

**Art. 32.**

The present Convention may be signed until the 31st December next by the Powers represented at the Conference which was opened at Geneva on the 11th June, 1906, as also by the Powers, not represented at that Conference, which signed the Convention of 1864.

Such of the aforesaid Powers as shall have not signed the present Convention by the 31st December, 1906, shall remain free to accede to it subsequently. They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the Contracting Powers.

Other Powers may apply to accede in the same manner, but their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the Council from any of the Contracting Powers.

**Art. 33.**

Each of the Contracting Powers shall be at liberty to denounce the present Convention. The denunciation shall not take effect until one year after the written notification of it has reached the Swiss Federal Council. The Council shall immediately communicate the notification to all the other Contracting Parties.

The denunciation shall only affect the Power which has notified it.

In witness whereof the Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Geneva the 6th July, 1906, in a single copy, which shall be deposited in the archives of the Swiss Confederation, and of which copies certified as correct shall be forwarded to the Contracting Powers through the diplomatic channel.

(Here follow the signatures of the plenipotentiaries.) Great Britain signed under reserve of Arts. 23, 27 and 28 (but see para. 180, footnote 3, and para. 210, footnote 3), Persia under reserve of Art. 18.

The Ratifications of the following States have up to the present been deposited:—

Great Britain.	Japan:
Siam.	Netherlands.
United States.	Chile.
Russia.	Servia.
Italy.	Norway.
Switzerland.	Honduras.
Congo.	Portugal.
Germany.	Roumania.
Mexico.	Sweden.
Denmark:	Guatemala.
Brazil.	Bulgaria.
Luxemburg.	France.
Belgium.	Greece.
Spain.	Uruguay.
Austria-Hungary:	

The following accessions have been notified:—

Afghanistan.	Finland.
Albania.	Haiti.
Czechoslovakia.	Iceland.
Colombia.	Latvia.
Costa-Rica.	Lithuania.
Cuba.	Nicaragua.
Dantzic.	Paraguay.
Dominican Republic.	Poland.
Ecuador.	Salvador.
Egypt. <sup>1</sup>	Turkey <sup>1</sup> .
Estonia.	Venezuela.

#### APPENDIX 5:

#### INTERNATIONAL CONVENTION RELATIVE TO THE OPENING OF HOSTILITIES.

*Signed at The Hague, 18th October, 1907.*

*(British Ratification deposited at The Hague, 27th November, 1909.)*

(Translation.)

#### *Convention relative à l'Ouverture des Hostilités.*

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes.

(Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries to the Conference.)

Considérant que, pour la sécurité des relations pacifiques, il importe que les hostilités ne commencent pas sans un avertissement préalable;

Qu'il importe, de même, que l'état de guerre soit notifié sans retard aux Puissances neutres;

Désirant conclure une Convention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir:

(Here follow the names of the Plenipotentiaries.)

#### *Convention relative to the Opening of Hostilities.*

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India.

Considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning.

That it is equally important that the existence of a state of war should be notified without delay to neutral Powers; and

Being desirous of concluding a Convention to this effect, have appointed the following as their Plenipotentiaries:

<sup>1</sup> With certain reservations.

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Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:—

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:—

## Art. 1.

Les Puissances Contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'un ultimatum avec déclaration de guerre conditionnelle.

## Art. 1.

The Contracting Powers recognize that hostilities between them must not commence without a previous and explicit warning in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war.

## Art. 2.

L'état de guerre devra être notifié sans retard aux Puissances neutres et ne produira effet à leur égard qu'après réception d'une notification qui pourra être faite même par voie télégraphique. Toutefois les Puissances neutres ne pourraient invoquer l'absence de notification, s'il était établi d'une manière non douteuse qu'en fait elles connaissaient l'état de guerre.

## Art. 2.

The existence of a state of war must be notified to the neutral Powers without delay, and shall not be held to affect them until after the receipt of a notification, which may, however, be given by telegraph. Nevertheless, neutral Powers may not rely on the absence of notification if it be established beyond doubt that they were in fact aware of the existence of a state of war.

## Art. 3.

L'Article 1 de la présente Convention produira effet en cas de guerre entre deux ou plusieurs des Puissances Contractantes.

L'Article 2 est obligatoire dans les rapports entre un belligérant contractant et les Puissances neutres également contractantes.

## Art. 3.

Article 1 of the present Convention shall take effect in case of war between two or more of the Contracting Powers.

Article 2 applies as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention.

## Art. 4.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés

## Art. 4.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said



par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

#### Art. 5.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion en indiquant la date à laquelle il a reçu la notification.

#### Art. 6.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt, et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

#### Art. 7.

S'il arrivait qu'une des Hautes Parties Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

#### Art. 8.

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 4, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 5, alinéa 2) ou de dénonciation (Article 7, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

#### Art. 5.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

#### Art. 6.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

#### Art. 7.

In the event of one of the High Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

#### Art. 8.

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 4, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 5, paragraph 2) or of denunciation (Article 7, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

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**Ch. XIV** En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

The Convention was signed at The Hague by the Plenipotentiaries of 42 States.

The Ratifications of the following States have up to the present been deposited:—

Great Britain.  
Germany.  
United States.  
Austria-Hungary.  
Denmark.  
Mexico.  
Netherlands.  
Russia.

Sweden.  
Bolivia.  
Salvador.  
Haiti.  
Japan.  
Roumania.  
Guatemala.  
Panama.

Portugal.  
Luxemburg.  
France.  
Norway.  
Siam.  
Switzerland.  
Belgium.  
Spain.

The following Accessions have been notified:—

Nicaragua.

Poland.

China.

## APPENDIX 6.

### INTERNATIONAL CONVENTION CONCERNING THE LAWS AND CUSTOMS OF WAR ON LAND.

*Signed at The Hague, 18th October, 1907.*

*(British Ratification deposited at The Hague, 27th November, 1909.)*

*(Translation.)*

*Convention concernant les Lois et Coutumes de la Guerre sur Terre.*

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes:

(Here follows the list of Sovereigns and heads of States who sent Plenipotentiaries to the Conference.)

Considérant que, tout en recherchant les moyens de sauvegarder la paix et de prévenir les conflits armés entre les nations, il importe de se préoccuper également du cas où l'appel aux armes serait amené par des événements que leur sollicitude n'aurait pu détourner;

Animés du désir de servir encore, dans cette hypothèse extrême, les intérêts de l'humanité et les exigences toujours, progressives de la civilisation;

Estimant qu'il importe, à cette fin, de reviser les lois et coutumes générales de la guerre, soit dans le but de les définir avec plus de précision, soit

*Convention concerning the Laws and Customs of War on Land.*

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India.

(Here follows the list of Sovereigns and heads of States who sent Plenipotentiaries to the Conference.)

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events beyond their responsibility to control;

Being animated also by the desire to serve, even in this extreme case, the interests of humanity and the ever-progressive needs of civilization; and

Thinking it important, with this object, to revise the general laws and customs of war, with the view on the one hand of defining them with

aim d'y tracer certaines limites destinées à en restreindre autant que possible les rigueurs;

Ont jugé nécessaire de compléter et de préciser sur certains points l'œuvre de la Première Conférence de la Paix, qui, s'inspirant, à la suite de la Conférence de Bruxelles de 1874, de ces idées recommandées par une sage et généreuse prévoyance, a adopté des dispositions ayant pour objet de définir et de régler les usages de la guerre sur terre.

Selon les vues des Hautes Parties Contractantes, ces dispositions, dont la rédaction a été inspirée par le désir de diminuer les maux de la guerre, autant que les nécessités militaires le permettent, sont destinées à servir de règle générale de conduite aux belligérants, dans leurs rapports entre eux et avec les populations.

Il n'a pas été possible toutefois de concerter dès maintenant des stipulations s'étendant à toutes les circonstances qui se présentent dans la pratique;

D'autre part, il ne pouvait entrer dans les intentions des Hautes Parties Contractantes que les cas non prévus fussent, faute de stipulation écrite, laissés à l'appréciation arbitraire de ceux qui dirigent les armées.

En attendant qu'un code plus complet des lois de la guerre puisse être édicté, les Hautes Parties Contractantes jugent opportun de constater que, dans les cas non compris dans les dispositions réglementaires adoptées par elles, les populations et les belligérants restent sous la sauve-garde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité et des exigences de la conscience publique.

Elles déclarent que c'est dans ce sens que doivent s'entendre notamment les Articles 1 et 2 du Règlement adopté.

Les Hautes Parties Contractantes, désirant conclure une nouvelle Convention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir:

(Here follow the names of the Plenipotentiaries.)

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:—

#### Art. 1.

Les Puissances Contractantes donneront à leurs forces armées de

greater precision, and, on the other hand, of confining them within limits intended to mitigate their severity as far as possible;

Have deemed it necessary to complete and render more precise in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and regulate the usages of war on land.

According to the views of the High Contracting Parties, these provisions, the drafting of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert stipulations covering all the circumstances which arise in practice;

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in default of written agreement, be left to the arbitrary opinion of military commanders.

Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The High Contracting Parties, wishing to conclude a fresh Convention to this effect, have appointed at this effect, have appointed at their Plenipotentiaries, that is so say:

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following:—

#### Art. 1.

The Contracting Powers shall issue instructions to their armed land

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Ch. XIV terre des instructions qui seront conformes au Règlement concernant les Lois et Coutumes de la Guerre sur Terre, annexé à la présente Convention.

forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention.

#### Art. 2.

Les dispositions contenues dans le Règlement visé à l'Article 1 ainsi que dans la présente Convention ne sont applicables qu'entre les Puissances Contractantes, et seulement si les belligérants sont tous parties à la Convention.

#### Art. 2.

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

#### Art. 3.

La partie belligérante qui violerait les dispositions du dit Règlement sera tenue à indemnité, s'il y a lieu. Elle sera responsable de tous actes commis par les personnes faisant partie de sa force armée.

#### Art. 3.

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

#### Art. 4.

La présente Convention dûment ratifiée remplacera, dans les rapports entre les Puissances Contractantes, la Convention du 29 Juillet, 1899, concernant les Lois et Coutumes de la Guerre sur Terre.

#### Art. 4.

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention of the 29th July, 1899, respecting the Laws and Customs of War on Land.

La Convention du 1899 reste en vigueur dans les rapports entre les Puissances qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

The Convention of 1899 remains in force as between the Powers which signed it, but which do not ratify the present Convention.

#### Art. 5.

La présente Convention sera ratifiée aussitôt que possible.

#### Art. 5.

The present Convention shall be ratified as soon as possible.

Les ratifications seront déposées à La Haye.

The ratifications shall be deposited at The Hague.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases con-

Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

#### Art. 6.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

#### Art. 7.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

#### Art. 8.

S'il arrivait qu'une des Puissances Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

#### Art. 9.

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 5, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 6, alinéa 2) ou de dénonciation (Article 8, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

templated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

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#### Art. 6.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherlands Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

#### Art. 7.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherlands Government.

#### Art. 8.

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherlands Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherlands Government.

#### Art. 9.

A register kept by the Netherlands Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 6, paragraph 2) or of denunciation (Article 8, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

**Ch. XIV** En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

## ANNEX TO THE CONVENTION.

### RÈGLEMENT CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE.

#### SECTION I.—DES BELLIGÉRANTS.

##### CHAPITRE I.—*De la Qualité de Belligérant.*

###### Art. 1.

LES lois, les droits, et les devoirs de la guerre ne s'appliquent pas seulement à l'armée, mais encore aux milices et aux corps de volontaires réunissant les conditions suivantes:—

1. D'avoir à leur tête une personne responsable pour ses subordonnés;
2. D'avoir un signe distinctif fixe et reconnaissable à distance;
3. De porter les armes ouvertement; et
4. De se conformer dans leurs opérations aux lois et coutumes de la guerre.

Dans les pays où les milices ou des corps de volontaires constituent l'armée ou en font partie, ils sont compris sous la dénomination d'armée.

###### Art. 2.

La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanément les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformément à l'Article 1, sera considérée comme belligérante si elle porte les armes ouvertement et si elle respecte les lois et coutumes de la guerre.

###### Art. 3.

Les forces armées des parties belligérantes peuvent se composer de combattants et de non-combattants. En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre.

### REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

#### SECTION I.—OF BELLIGERENTS.

##### CHAPTER I.—*The Status of Belligerent.*

###### Art. 1.

THE laws, rights, and duties of war apply not only to the army, but also to militia and volunteer corps fulfilling all the following conditions:—

1. They must be commanded by a person responsible for his subordinates;
2. They must have a fixed distinctive sign recognizable at a distance;
3. They must carry arms openly; and
4. They must conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

###### Art. 2.

The inhabitants of a territory not under occupation who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly, and if they respect the laws and customs of war.

###### Art. 3.

The armed forces of the belligerents may consist of combatants and non-combatants. In the case of capture by the enemy, both have the right to be treated as prisoners of war.

CHAPITRE II.—*Des Prisonniers de Guerre.*

## Art. 4.

Les prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité.

Tout ce qui leur appartient personnellement, excepté les armes, les chevaux, et les papiers militaires, reste leur propriété.

## Art. 5.

Les prisonniers de guerre peuvent être assujettis à l'internement dans une ville, forteresse, camp, ou localité quelconque, avec obligation de ne pas s'en éloigner au delà de certaines limites déterminées; mais ils ne peuvent être enfermés que par mesure de sûreté indispensable, et seulement pendant la durée des circonstances qui nécessitent cette mesure.

## Art. 6.

L'État peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes, à l'exception des officiers. Ces travaux ne seront pas excessifs et n'auront aucun rapport avec les opérations de la guerre.

Les prisonniers peuvent être autorisés à travailler pour le compte d'administrations publiques ou de particuliers, ou pour leur propre compte.

Les travaux faits pour l'État sont payés d'après les tarifs en vigueur pour les militaires de l'armée nationale exécutant les mêmes travaux, ou, s'il n'en existe pas, d'après un tarif en rapport avec les travaux exécutés.

Lorsque les travaux ont lieu pour le compte d'autres administrations publiques ou pour des particuliers, les conditions en sont réglées d'accord avec l'autorité militaire.

Le salaire des prisonniers contribuera à adoucir leur position, et le surplus leur sera compté au moment de leur libération, sauf déduction des frais d'entretien.

## Art. 7.

Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

À défaut d'une entente spéciale entre les belligérants, les prisonniers de guerre seront traités pour la nourriture, le couchage, et l'habillement sur le même pied que les troupes du Gouvernement qui les aura capturés.

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## Art. 4.

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

## Art. 5.

Prisoners of war may be interned in a town, fortress, camp, or other place, and are bound not to go beyond certain fixed limits; but they cannot be placed in confinement except as an indispensable measure of safety, and only while the circumstances which necessitate the measure continue to exist.

## Art. 6.

The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity. The work shall not be excessive, and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at rates proportional to the work of a similar kind executed by soldiers of the national army, or, if there are no such rates in force, at rates proportional to the work executed.

When the work is for other branches of the public service, or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, deductions on account of the cost of maintenance excepted.

## Art. 7.

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In default of special agreement between the belligerents, prisoners of war shall be treated, as regards rations, quarters, and clothing, on the same footing as the troops of the Government which captured them.

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## Art. 8.

Les prisonniers de guerre seront soumis aux lois, Règlements, et ordres en vigueur dans l'armée de l'État au pouvoir duquel ils se trouvent. Tout acte d'insubordination autorisée à leur égard, les mesures de rigueur nécessaires.

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée ou avant de quitter le territoire occupé par l'armée qui les aura capturés, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

## Art. 9.

Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables noms et grade et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

## Art. 10.

Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre Gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole donnée.

## Art. 11.

Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole; de même le Gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

## Art. 12.

Tout prisonnier de guerre libéré sur parole et repris portant les armes contre le Gouvernement envers lequel il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre, et peut être traduit devant les Tribunaux.

## Art. 13.

Les individus qui suivent une armée sans en faire directement

## Art. 8.

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in the power of which they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of their previous escape.

## Art. 9.

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule he is liable to have the advantages given to prisoners of his class curtailed.

## Art. 10.

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they may have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

## Art. 11.

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

## Art. 12.

Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and may be put on trial before the Courts.

## Art. 13.

Individuals following an army without directly belonging to it, such



partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi et que celui-ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient.

#### Art. 14.

Il est constitué, dès le début des hostilités dans chacun des États belligérants, et, le cas échéant, dans les pays neutres qui auront recueilli des belligérants sur leur territoire, un bureau de renseignements sur les prisonniers de guerre. Ce bureau, chargé de répondre à toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications relatives aux internements et aux mutations, aux mises en liberté sur parole, aux échanges, aux évasions, aux entrées dans les hôpitaux, aux décès, ainsi que les autres renseignements nécessaires pour établir et tenir à jour une fiche individuelle pour chaque prisonnier de guerre. Le bureau devra porter sur cette fiche le numéro matricule, les nom et prénom, l'âge, le lieu d'origine, le grade, le corps de troupe, les blessures, la date, et le lieu de la capture, de l'internement, des blessures, et de la mort, ainsi que toutes les observations particulières. La fiche individuelle sera remise au Gouvernement de l'autre belligérant après la conclusion de la paix.

Le bureau de renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres, &c., qui seront trouvés sur les champs de bataille ou délaissés par des prisonniers libérés sur parole, échangés, évadés, ou décédés dans les hôpitaux et ambulances et de les transmettre aux intéressés.

#### Art. 15.

Les sociétés de secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays, et ayant pour objet d'être les intermédiaires de l'action charitable recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité dans les limites tracées par les nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d'humanité. Les délégués de ces sociétés pourront être admis à distribuer des

as newspaper correspondents or Ch. XIV  
reporters, sutlers or contractors, who fall into the enemy's hands, and whom the latter thinks it expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

#### Art. 14.

A bureau for information relative to prisoners of war is instituted at the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents on their territory. The business of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as all other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The bureau must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is also the business of the information bureau to gather and keep together all personal effects, valuables, letters, &c., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

#### Art. 15.

Societies for the relief of prisoners of war, if properly constituted in accordance with the laws of their country, and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military exigencies and administrative regulations. Representatives of these societies, when furnished with a personal permit by

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secours dans les dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait.

the military authorities, may, on giving an undertaking in writing to comply with all measures of order and police which they may have to issue, be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners.

## Art. 16.

Les bureaux de renseignements jouissent de la franchise de port. Les lettres, mandats, et articles d'argent ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux, seront affranchis de toutes les taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport, sur les chemins de fer exploités par l'État.

Information bureaux enjoy the privilege of free carriage. Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or dispatched by them, shall be exempt from all postal charges in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as any payment for carriage by State railways.

## Art. 16.

## Art. 17.

Les officiers prisonniers recevront la solde à laquelle ont droit les officiers de même grade du pays où ils sont retenus, à charge de remboursement par leur Gouvernement.

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained; the amount shall be refunded by their own Government.

## Art. 17.

## Art. 18.

Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux offices de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire.

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of their own Church, on the sole condition that they comply with the police regulations issued by the military authorities.

## Art. 18.

## Art. 19.

Les testaments des prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang.

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

## Art. 19.

## Art. 20.

Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

## Art. 20.

CHAPITRE III.—*Des Malades et des Blessés.*

## Art. 21.

Les obligations des belligérants concernant le service des malades et des blessés sont régies par la Convention de Genève.

## SECTION II.—DES HOSTILITES.

CHAPITRE I.—*Des Moyens de Nuire à l'Ennemi, des Sièges, et des Bombardements.*

## Art. 22.

Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

## Art. 23.

Outre les prohibitions établies par des Conventions spéciales, il est notamment interdit—

- (a) D'employer du poison ou des armes empoisonnées;
- (b) De tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemie;
- (c) De tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion;
- (d) De déclarer qu'il ne sera pas fait de quartier;
- (e) D'employer des armes, des projectiles, ou des matières propres à causer des maux superflus;
- (f) D'user indûment du pavillon parlementaire, du pavillon national, ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève;
- (g) De détruire ou de saisir des propriétés ennemies, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre;
- (h) De déclarer éteints, suspendus, ou non recevables en justice, les droits et actions des nationaux de la partie adverse.

Il est également interdit à un belligérant de forcer les nationaux de la partie adverse à prendre part aux opérations de guerre dirigées contre leur pays, même dans le cas où ils auraient été à son service avant le commencement de la guerre.

CHAPTER III.—*The Sick and Wounded..* Ch. XIV

## Art. 21.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

## SECTION II.—OF HOSTILITIES.

CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments.*

## Art. 22.

Belligerents have not got an unlimited right as to the choice of means of injuring the enemy.

## Art. 23.

In addition to the prohibitions provided by special Conventions, it is particularly forbidden—

- (a) To employ poison or poisoned weapons;
- (b) To kill or wound by treachery individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion;
- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as of the distinctive signs of the Geneva Convention;
- (g) To destroy or seize enemy property, unless such destruction or seizure be imperatively demanded by the necessities of war;
- (h) To declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings.

A belligerent is likewise forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country, even if they were in the service of the belligerent before the commencement of the war.

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## Art. 24.

Les ruses de guerre et l'emploi des moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites.

## Art. 24.

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

## Art. 25.

Il est interdit d'attaquer ou de bombarder, par quelque moyen que ce soit, des villes, villages, habitations, ou bâtiments qui ne sont pas défendus.

## Art. 25.

The attack or bombardment, by any means whatever, of undefended towns, villages, dwellings, or buildings is forbidden.

## Art. 26.

Le commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités.

## Art. 26.

The officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, except in cases of assault.

## Art. 27.

Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les monuments historiques, les hôpitaux, et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

## Art. 27.

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

Le devoir des assiégés est de désigner ces édifices ou lieux de rassemblement par des signes visibles spéciaux qui seront notifiés d'avance à l'assiégeant.

It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

## Art. 28.

Il est interdit de livrer au pillage une ville ou localité même prise d'assaut.

## Art. 28.

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

CHAPITRE II.—*Des Espions.*

## Art. 29.

Ne peut être considéré comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, recueille ou cherche à recueillir des informations dans la zone d'opérations d'un belligérant, avec l'intention de les communiquer à la partie adverse.

CHAPTER II.—*Spies.*

## Art. 29.

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Ainsi les militaires non déguisés qui ont pénétré dans la zone d'opérations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions. De même, ne sont pas considérés comme espions les militaires et les non-militaires, accomplissant ouvertement leur mission, chargés de transmettre des dépêches destinées, soit à leur propre armée, soit à l'armée ennemie.

Accordingly, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army for the purpose of obtaining information are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians entrusted with the delivery of despatches intended either for their own army or for the enemy's army, and carrying out their mission

A cette catégorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et, en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire.

Art. 30.

L'espion pris sur le fait ne pourra être puni sans jugement préalable.

Art. 31.

L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs.

CHAPITRE III.—*Des Parlementaires.*

Art. 32.

Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc. Il a droit à l'inviolabilité ainsi que le trompette, clairon ou tambour, le porteur de drapeau, et l'interprète qui l'accompagneraient.

Art. 33.

Le chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances.

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner.

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire.

Art. 34.

Le parlementaire perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison<sup>1</sup>.

CHAPITRE IV.—*Des Capitulations.*

Art. 35.

Les capitulations arrêtées entre les parties contractantes doivent tenir compte des règles de l'honneur militaire.

Une fois fixées, elles doivent être scrupuleusement observées par les deux parties.

openly. To this class likewise belong persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

Art. 30.

A spy taken in the act shall not be punished without previous trial.

Art. 31.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts as a spy.

CHAPTER III.—*Flags of Truce.*<sup>1</sup>

Art. 32.

A person is regarded as bearing a flag of truce<sup>1</sup> who has been authorized by one of the belligerents to enter into communication with the other, and who presents himself under a white flag. He is entitled to inviolability, as also the trumpeter, bugler or drummer, the flag-bearer and the interpreter who might accompany him.

Art. 33.

The commander to whom a flag of truce is sent is not obliged in every case to receive it.

He may take all steps necessary in order to prevent the envoy<sup>1</sup> from taking advantage of his mission to obtain information.

In case of abuse, he has the right temporarily to detain the envoy.<sup>1</sup>

Art. 34.

The envoy<sup>1</sup> loses his rights of inviolability if it is proved in a positive and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery<sup>2</sup>.

CHAPTER IV.—*Capitulations.*

Art. 35.

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

<sup>1</sup> It would be preferable to use the word "parlementaire." It will be observed in this chapter of The Hague Rules that if it is not used "*parlementaire*" has to be translated in three different ways, as "flags of truce," "a person . . . bearing a flag of truce," and the "envoy." See para. 224, footnote.

<sup>2</sup> "*Traison*" should here be translated "treason." See para. 251, footnote.

Ch. XIV CHAPITRE V.—*De l'Armistice.*CHAPTER V.—*Armistices.*

## Art. 36.

L'armistice suspend les opérations de guerre par un accord mutuel des parties belligérantes. Si la durée n'en est pas déterminée, les parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice.

## Art. 36.

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

## Art. 37.

L'armistice peut être général ou local. Le premier suspend partout les opérations de guerre des États belligérants: le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé.

## Art. 37.

An armistice may be general or local. The first suspends the entire military operations of the belligerent States; the second between certain portions of the belligerent armies only and within a fixed zone.

## Art. 38.

L'armistice doit être notifié officiellement et en temps utile aux autorités compétentes et aux troupes. Les hostilités sont suspendues immédiatement après la notification ou au terme fixé.

## Art. 38.

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or at the time fixed.

## Art. 39.

Il dépend des parties contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles.

## Art. 39.

It rests with the contracting parties to settle, in the terms of the armistice, the relations which may be allowed in the theatre of war with, and between, the civil populations.

## Art. 40.

Toute violation grave de l'armistice, par l'une des parties, donne à l'autre le droit de le dénoncer et même, en cas d'urgence, de reprendre immédiatement les hostilités.

## Art. 40.

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

## Art. 41.

La violation des clauses de l'armistice, par des particuliers agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvées.

## Art. 41.

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if there is occasion for it, compensation for the losses sustained.

## SECTION III.—DE L'AUTORITÉ MILITAIRE SUR LE TERRITOIRE DE L'ÉTAT ENNEMI.

## SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE.

## Art. 42.

Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie.

## Art. 42.

Territory is considered occupied when actually placed under the authority of the hostile army.

L'occupation ne s'étend qu'aux territoires<sup>1</sup> où cette autorité est établie et en mesure de s'exercer.

The occupation extends only to the territory<sup>1</sup> where such authority has been established and is in a position to assert itself.

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Art. 43.

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publiques en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

Art. 43.

The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter shall do all in his power to restore, and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country.

Art. 44.<sup>2</sup>

Il est interdit à un belligérant de forcer la population d'un territoire occupé à donner des renseignements sur l'armée de l'autre belligérant ou sur ses moyens de défense.

Art. 44.<sup>2</sup>

A belligerent is forbidden to compel the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

Art. 45.

Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie.

Art. 45.

It is forbidden to force the inhabitants of occupied territory to swear allegiance to the hostile Power.

Art. 46.

L'honneur et les droits de la famille, la vie des individus, et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés.

Art. 46.

Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected.

La propriété privée ne peut pas être confisquée.

Private property may not be confiscated.

Art. 47.

Le pillage est formellement interdit.

Art. 47.

Pillage is expressly forbidden.

Art. 48.

Si l'occupant prélève, dans le territoire occupé, les impôts, droits, et péages établis au profit de l'État, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu.

Art. 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls payable to the State, he shall do so, as far as is possible, in accordance with the legal basis and assessment in force at the time, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the national Government had been so bound.

Art. 49.

Si, en dehors des impôts visés à l'Article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire.

Art. 49.

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, they shall only be applied to the needs of the army or of the administration of the territory in question.

<sup>1</sup> The translation should be "territories."

<sup>2</sup> This article has not been accepted by Germany, Japan and Russia.

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## Art. 50.

Aucune peine collective, pécuniaire ou autre, ne pourra être édictée contre les populations à raison de faits individuels dont elles ne pourraient être considérées comme solidairement responsables.

## Art. 50:

No collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

## Art. 51.

Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un général en chef.

## Art. 51.

No contribution shall be collected except under a written order, and on the responsibility of a General in command.

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur.

The collection of the said contribution shall only be effected in accordance, as far as is possible, with the legal basis and assessment of taxes in force at the time.

Pour toute contribution, un reçu sera délivré aux contribuables.

For every contribution a receipt shall be given to the contributors.

## Art. 52.

Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants que pour les besoins de l'armée d'occupation. Ils seront en rapport avec les ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.

## Art. 52.

Requisitions in kind and services shall not be demanded from local authorities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du commandant dans la localité occupée.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Les prestations en nature seront, autant que possible, payées au comptant; sinon, elles seront constatées par des reçus, et le paiement des sommes dues sera effectué le plus tôt possible.

Contributions in kind shall as far as possible be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

## Art. 53.

L'armée qui occupe un territoire ne pourra saisir que le numéraire, les fonds, et les valeurs exigibles appartenant en propre à l'État, les dépôts d'armes, moyens de transport, magasins, et approvisionnements, et, en général, toute propriété mobilière de l'État de nature à servir aux opérations de la guerre.

## Art. 53:

An army of occupation shall only take possession of cash, funds, and realizable securities which are strictly the property of the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

Tous les moyens affectés sur terre, sur mer, et dans les airs à la transmission des nouvelles, au transport des personnes ou des choses, en dehors des cas régis par le droit maritime, les dépôts d'armes et, en général, toute espèce de munitions de guerre, peuvent être saisis, même s'ils appartiennent à des personnes privées, mais devront être restitués et les indemnités seront réglées à la paix.

Except in cases governed by naval law, all appliances adapted for the transmission of news, or for the transport of persons or goods, whether on land, at sea, or in the air, depôts of arms, and, in general, all kinds of war material may be seized, even if they belong to private individuals, but they must be restored at the conclusion of peace, and indemnities must be paid for them.



## Art. 54.

Les câbles sous-marins reliant un territoire occupé à un territoire neutre ne seront saisis ou détruits que dans le cas d'une nécessité absolue. Ils devront également être restitués et les indemnités seront réglées à la paix.

## Art. 54.

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They also must be restored at the conclusion of peace, and indemnities paid for them.

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## Art. 55.

L'État occupant ne se considérera que comme administrateur et usufruitier des édifices publics, immeubles, forêts, et exploitations agricoles appartenant à l'État ennemi et se trouvant dans le pays occupé. Il devra sauvegarder le fonds de ces propriétés et les administrer conformément aux règles de l'usufruit.

## Art. 55.

The occupying State shall be regarded only as administrator and usufructuary of public buildings, landed property, forests and agricultural undertakings belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of such properties, and administer them in accordance with the rules of usufruct.

## Art. 56.

Les biens des communes, ceux des établissements consacrés aux cultes, à la charité et à l'instruction, aux arts et aux sciences, même appartenant à l'État, seront traités comme la propriété privée.

Toute saisie, destruction, ou dégradation intentionnelle de semblables établissements, de monuments historiques, d'œuvres d'art et de science, est interdite et doit être poursuivie.

## Art. 56.

The property of local authorities, as well as that of institutions dedicated to public worship, charity, education, and to science and art, even when State property, shall be treated as private property.

Any seizure or destruction of, or wilful damage to, institutions of this character, historic monuments and works of science and art, is forbidden, and should be made the subject of legal proceedings.

This Convention was signed at The Hague by the Plenipotentiaries of 41 States.

The Ratifications of the following States have up to the present been deposited :—

Great Britain.  
Austria-Hungary.  
Bolivia.  
Denmark.  
Germany<sup>1</sup>.  
Haiti.  
Mexico.  
Netherlands.

Salvador.  
Sweden.  
United States.  
Guatemala.  
Panama.  
Japan<sup>1</sup>.  
Roumania.  
Cuba.

Portugal.  
Belgium.  
France.  
Luxemburg.  
Norway.  
Russia<sup>1</sup>.  
Siam.  
Switzerland.  
Brazil.

The following Accessions have been notified :—

Nicaragua.  
Liberia.

China.  
Finland.

Poland.

<sup>1</sup> With reserve of art. 44 of the Regulations annexed to the Convention.

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## APPENDIX 7.

## INTERNATIONAL CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN WAR ON LAND.

*Signed at The Hague, 18th October, 1907.*(Not yet ratified by Great Britain<sup>1</sup>.)

(Translation.)

*Convention concernant les Droits et les Devoirs des Puissances et des Personnes Neutres en cas de Guerre sur Terre.*

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes;

*Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land.*

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

(Here follows a list of the Sovereigns and heads of States who sent Plenipotentiaries.)

En vue de mieux préciser les droits et les devoirs des Puissances neutres en cas de guerre sur terre et de régler la situation des belligérants réfugiés en territoire neutre;

Désirant également définir la qualité de neutre en attendant qu'il soit possible de régler dans son ensemble la situation des particuliers neutres dans leurs rapports avec les belligérants;

Ont résolu de conclure une Convention à cet effet et ont, en conséquence, nommé pour leurs Plénipotentiaires, savoir:

(Here follow the names of the Plenipotentiaries.)

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:—

With the view of laying down more clearly the rights and duties of neutral Powers in case of war on land and of regulating the position of belligerents who have taken refuge in neutral territory;

Being likewise desirous of defining the meaning of the term "neutral," pending the possibility of settling, in its entirety, the position of neutral persons in their relations with belligerents;

Have resolved to conclude a Convention to this effect, and have, in consequence, appointed as their Plenipotentiaries, that is to say:

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:—

CHAPITRE I.—*Des Droits et des Devoirs des Puissances Neutres.*

## Art. 1.

Le territoire des Puissances neutres est inviolable.

## Art. 2.

Il est interdit aux belligérants de faire passer à travers le territoire d'une Puissance neutre des troupes ou des convois, soit de munitions, soit d'approvisionnements.

## Art. 3.

Il est également interdit aux belligérants:

- (a) D'installer sur le territoire d'une Puissance neutre une station radiotélégraphique ou tout appareil destiné

CHAPTER I.—*The Rights and Duties of Neutral Powers.*

## Art. 1.

The territory of neutral Powers is inviolable.

## Art. 2.

Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power.

## Art. 3.

Belligerents are likewise forbidden to:

- (a) Erect on the territory of a neutral Power a wireless telegraphy station or any apparatus for the purpose of

<sup>1</sup> See para. 466, footnote.

à servir comme moyen de communication avec des forces belligérantes sur terre ou sur mer;

- (b) D'utiliser toute installation de ce genre établie par eux avant la guerre sur le territoire de la Puissance neutre dans un but exclusivement militaire, et qui n'a pas été ouverte au service de la correspondance publique.

#### Art. 4.

Des corps de combattants ne peuvent être formés, ni des bureaux d'enrôlement ouverts, sur le territoire d'une Puissance neutre au profit des belligérants.

#### Art. 5.

Une Puissance neutre ne doit tolérer sur son territoire aucun des actes visés par les Articles 2 à 4.

Elle n'est tenue de punir des actes contraires à la neutralité que si ces actes ont été commis sur son propre territoire.

#### Art. 6.

La responsabilité d'une Puissance neutre n'est pas engagée par le fait que des individus passent isolément la frontière pour se mettre au service de l'une des belligérants.

#### Art. 7.

Une Puissance neutre n'est pas tenue d'empêcher l'exportation ou le transit, pour le compte de l'un ou de l'autre des belligérants, d'armes, de munitions, et, en général, de tout ce qui peut être utile à une armée ou à une flotte.

#### Art. 8.

Une Puissance neutre n'est pas tenue d'interdire ou de restreindre l'usage, pour les belligérants, des câbles télégraphiques ou téléphoniques, ainsi que des appareils de télégraphie sans fil, qui sont, soit sa propriété soit celle de Compagnies ou de particuliers.

#### Art. 9.

Toutes mesures restrictives ou prohibitives prises par une Puissance neutre à l'égard des matières visées par les Articles 7 et 8 devront être uniformément appliquées par elle aux belligérants.

La Puissance neutre veillera au respect de la même obligation par les Compagnies ou particuliers propriétaires de câbles télégraphiques ou téléphoniques ou d'appareils de télégraphie sans fil.

communicating with belligerent forces on land or sea; **Ch. XIV**

- (b) Use any installation of this kind established by them for purely military purposes on the territory of a neutral Power before the war, and not previously opened for the service of public messages.

#### Art. 4.

Corps of combatants must not be formed, nor recruiting agencies opened, on the territory of a neutral Power, to assist the belligerents.

#### Art. 5.

A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of neutrality unless such acts have been committed on its own territory.

#### Art. 6.

The responsibility of a neutral Power is not involved by the mere fact that persons cross the frontier individually in order to offer their services to one of the belligerents.

#### Art. 7.

A neutral Power is not bound to prevent the export or transit, for either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet.

#### Art. 8.

A neutral Power is not bound to forbid or restrict the use on behalf of belligerents of telegraph or telephone cables, or of wireless telegraphy apparatus, belonging to it or to Companies or to private individuals.

#### Art. 9.

A neutral Power must apply impartially to the belligerents every restriction or prohibition which it may enact in regard to the matters referred to in Articles 7 and 8.

The neutral Power shall see that the above obligation is observed by Companies or private owners of telegraph or telephone cables or wireless telegraphy apparatus.

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## Art. 10.

Ne peut être considéré comme un acte hostile le fait, par une Puissance neutre, de repousser, même par la force, les atteintes à sa neutralité.

## Art. 10.

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

CHAPITRE II. — *Des Belligérants internés et des Blessés soignés chez les Neutres.*

## Art. 11.

La Puissance neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera, autant que possible, loin du théâtre de la guerre.

Elle pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet.

Elle décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation.

CHAPTER II.—*Internment of Belligerents and Care of the Wounded in Neutral Territory.*

## Art. 11.

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and may even confine them in fortresses or in places set apart for the purpose.

It shall decide whether officers may be left free on giving their parole not to leave the neutral territory without permission.

## Art. 12.

A défaut de convention spéciale, la Puissance neutre fournira aux internés les vivres, les habillements, et les secours commandés par l'humanité.

Bonification sera faite, à la paix, des frais occasionnés par l'internement.

## Art. 12.

In default of special Agreement, the neutral Power shall supply the interned with the food, clothing, and relief which the dictates of humanity prescribe.

At the conclusion of peace the expenses caused by the internment shall be made good.

## Art. 13.

La Puissance neutre qui reçoit des prisonniers de guerre évadés les laissera en liberté. Si elle tolère leur séjour sur son territoire, elle peut leur assigner une résidence.

La même disposition est applicable aux prisonniers de guerre amenés par des troupes se réfugiant sur le territoire de la Puissance neutre.

## Art. 13.

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

## Art. 14.

Une Puissance neutre pourra autoriser le passage sur son territoire des blessés ou malades appartenant aux armées belligérantes, sous la réserve que les trains qui les amènent ne transporteront ni personnel, ni matériel de guerre. En pareil cas, la Puissance neutre est tenue de prendre les mesures de sûreté et de contrôle nécessaires à cet effet.

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par la

## Art. 14.

A neutral Power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies on condition that the trains or other methods of transport by which they are conveyed shall carry neither combatants nor war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick and wounded of one belligerent brought under these conditions into neutral territory by the other belligerent must be so kept by the neutral Power as to ensure their

<sup>1</sup> See para. 493, footnote, where it is suggested that "through" is a better translation than "into."

Puissance neutre de manière qu'ils ne puissent de nouveau prendre part aux opérations de la guerre. Cette Puissance aura les mêmes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés.

Art. 15.

La Convention de Genève s'applique aux malades et aux blessés internés sur territoire neutre.

taking no further part in the military operations. The same duty shall devolve on the neutral State with regard to the sick and wounded of the other army who may be committed to its care.

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Art. 15.

The Geneva Convention applies to the sick and wounded who are interned in neutral territory.

CHAPITRE III.—*Des personnes Neutres.*

Art. 16.<sup>1</sup>

Sont considérés comme neutres les nationaux d'un État qui ne prend pas part à la guerre.

Art. 17.<sup>1</sup>

Un neutre ne peut pas se prévaloir de sa neutralité:

- (a) S'il commet des actes hostiles contre un belligérant;
- (b) S'il commet des actes en faveur d'un belligérant, notamment s'il prend volontairement du service dans les rangs de la force armée de l'une des parties.

En pareil cas, le neutre ne sera pas traité plus rigoureusement par le belligérant contre lequel il s'est départi de la neutralité que ne pourrait l'être, à raison du même fait, un national de l'autre État belligérant.

Art. 18.<sup>1</sup>

Ne seront pas considérés comme actes commis en faveur d'un des belligérants, dans le sens de l'Article 17, lettre (b):

- (a) Les fournitures faites ou les emprunts consentis à l'un des belligérants, pourvu que le fournisseur ou le prêteur n'habite ni le territoire de l'autre partie, ni le territoire occupé par elle, et que les fournitures ne proviennent pas de ces territoires;
- (b) Les services rendus en matière de police ou d'administration civile.

CHAPTER III.—*Neutral Persons.*

Art. 16.<sup>1</sup>

The subjects or citizens of a State which is not taking part in the war are deemed neutrals.

Art. 17.<sup>1</sup>

A neutral cannot claim the benefit of his neutrality:

- (a) If he commits hostile acts against a belligerent;
- (b) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a subject or citizen of the other belligerent State could be for the same act.

Art. 18.<sup>1</sup>

The following shall not be considered as acts committed in favour of one belligerent within the meaning of Article 17, letter (b):

- (a) The furnishing of supplies or the making of loans to one of the belligerents, provided that the person so doing neither lives in the territory of the other party nor in territory occupied by it, and that the supplies do not come from such territory;
- (b) Services rendered in matters of police or civil administration.

<sup>1</sup> Great Britain signed this Convention under reserve of arts. 16, 17 and 18. See para. 466 note.

**Ch. XIV** CHAPITRE IV.—*Du Matériel des Chemins de Fer.*

**Art. 19.**

Le matériel des chemins de fer provenant du territoire de Puissances neutres, qu'il appartienne à ces Puissances ou à des sociétés ou personnes privées, et reconnaissable comme tel, ne pourra être réquisitionné et utilisé par un belligérant que dans le cas et la mesure où l'exige une impérieuse nécessité. Il sera renvoyé aussitôt que possible dans le pays d'origine.

La Puissance neutre pourra de même, en cas de nécessité, retenir et utiliser, jusqu'à due concurrence, le matériel provenant du territoire de la Puissance belligérante.

Une indemnité sera payée de part et d'autre en proportion du matériel utilisé et de la durée de l'utilisation.

**CHAPITRE V.—Dispositions Finales.**

**Art. 20.**

Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances Contractantes et seulement si les belligérants sont tous parties à la Convention.

**Art. 21.**

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

**CHAPTER IV.—Railway Material.**

**Art. 19.**

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of Companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except in so far as is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to a corresponding extent railway material coming from the territory of the belligerent Power.

Compensation shall be paid on either side in proportion to the material used, and to the period of usage.

**CHAPTER V.—Final Provisions.**

**Art. 20.**

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

**Art. 21.**

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification shall be immediately sent by the Netherland Government through the diplomatic channel, to the Powers invited to the Second Peace Conference as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

## Art. 22.

Les Puissances non Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

## Art. 23.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

## Art. 24.

S'il arrivait qu'une des Puissances Contractantes voulut dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances, en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

## Art. 25.

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt des ratifications effectué en vertu de l'Article 21, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 22, alinéa 2) ou de dénonciation (Article 24, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs Signatures.

## Art. 22.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

## Art. 23.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

## Art. 24.

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

## Art. 25.

A register kept by the Netherland Ministry of Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 21, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 22, paragraph 2) or of denunciation (Article 24, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

## Ch. XIV

**Ch. XIV** Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

This Convention was signed at The Hague by the Plenipotentiaries of forty-two States.

The Ratifications of the following States have up to the present been deposited:—

Austria-Hungary.  
Belgium.  
Bolivia.  
Denmark.  
Germany.  
Haiti.  
Mexico.  
Netherlands.

Norway.  
Russia.  
Salvador.  
Siam.  
Sweden.  
Switzerland.  
United States.  
Japan.

Panama.  
Roumania.  
Cuba.  
France.  
Luxemburg.  
Guatemala.  
Portugal.  
Spain.

The following Accessions have been notified:—

China.  
Nicaragua.

Liberia.  
Finland.

Poland.

## APPENDIX 8.

### INTERNATIONAL CONVENTION RESPECTING BOMBARDMENTS BY NAVAL FORCES IN TIME OF WAR.

*Signed at The Hague, 18th October, 1907.*

*[British Ratification deposited at The Hague, 27th November, 1909.]*

(Translation.)

*Convention concernant le Bombardement par des Forces Navales en Temps de Guerre.*

Se Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes;

*Convention respecting Bombardments by Naval Forces in Time of War.*

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

[Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries.]

Animés du désir de réaliser le vœu exprimé par la Première Conférence de la Paix, concernant le bombardement, par des forces navales, de ports, villes, et villages non défendus;

Considérant qu'il importe de soumettre les bombardements par des forces navales à des dispositions générales qui garantissent les droits des habitants et assurent la conservation des principaux édifices, en étendant à cette opération de guerre, dans la mesure du possible, les principes du Règlement de 1864 sur les Lois et Coutumes de la Guerre sur Terre;

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application to safeguard the rights of the inhabitants and to assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulations of 1864 respecting the Laws and Customs of Land War; and



S'inspirant ainsi du désir de servir les intérêts de l'humanité et de diminuer les rigueurs et les désastres de la guerre;

Ont résolu de conclure une Convention à cet effet, et ont, en conséquence, nommé pour leurs Plénipotentiaires, savoir:

[Here follow the names of the Plenipotentiaries.]

Lequels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:—

CHAPITRE I.—*Des Bombardement des Ports, Villes, Villages, Habitations, ou Bâtimens non défendus.*

#### Art. 1.<sup>1</sup>

Il est interdit de bombarder, par des forces navales, des ports, villes, villages, habitations, ou bâtimens qui ne sont pas défendus.

Une localité ne peut pas être bombardée à raison du seul fait que, devant son port, se trouvent mouillées des mines sous-marines automatiques de contact.

#### Art. 2.

Toutefois, ne sont pas compris dans cette interdiction les ouvrages militaires, établissemens militaires ou navals, dépôts d'armes ou de matériel de guerre, ateliers et installations propres à être utilisés pour les besoins de la flotte ou de l'armée ennemie, et les navires de guerre se trouvant dans le port. Le commandant d'une force navale pourra, après sommation avec délai raisonnable, les détruire par le canon, si tout autre moyen est impossible et lorsque les autorités locales n'auront pas procédé à cette destruction dans le délai fixé.

Il n'encourt aucune responsabilité dans ce cas pour les dommages involontaires qui pourraient être occasionnés par le bombardement.

Si des nécessités militaires, exigeant une action immédiate, ne permettaient pas d'accorder de délai, il reste entendu que l'interdiction de bombarder la ville non défendue subsiste comme dans le cas énoncé dans l'alinéa 1<sup>er</sup>, et que le commandant prendra toutes les dispositions voulues pour qu'il en résulte pour cette ville le moins d'inconvéniens possible.

#### Art. 3.

Il peut, après notification expresse, être procédé au bombardement des ports, villes, villages, habitations, ou bâtimens non défendus, si les

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war;

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed as their Plenipotentiaries, that is to say:

[Here follow the names of the Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:—

CHAPTER I.—*Bombardment of Unde-fended Ports, Towns, Villages, Dwellings, or Buildings.*

#### Art. 1.<sup>1</sup>

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour.

#### Art. 2.

Military works, military or naval establishments, dépôts of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

The Commander incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed to the enemy, it is nevertheless understood that the prohibition to bombard the undefended town holds good, as in the case given in the first paragraph, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

#### Art. 3.

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the

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<sup>1</sup> The 2nd paragraph of this article has not been accepted by Great Britain, France, Japan and Germany.

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autorités locales, mises en demeure par une sommation formelle, refusent d'obtempérer à des réquisitions de vivres ou d'approvisionnements nécessaires au besoin présent de la force navale qui se trouve devant la localité.

Ces réquisitions seront en rapport avec les ressources de la localité. Elles ne seront réclamées qu'avec l'autorisation du commandant de la dite force navale, et elles seront, autant que possible, payées au comptant; sinon elles seront constatées par des reçus.

## Art. 4.

Est interdit le bombardement, pour le non-paiement des contributions en argent, des ports, villes, villages, habitations, ou bâtiments non défendus.

local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

Such requisitions shall be proportional to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in ready money; if not, receipts shall be given.

## Art. 4.

The bombardment of undefended ports, towns, villages, dwellings, or buildings, on account of failure to pay money contributions, is forbidden.

CHAPITRE II.—*Dispositions Générales.*

## Art. 5.

Dans le bombardement par des forces navales, toutes les mesures nécessaires doivent être prises par le commandant pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades ou de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des habitants est de désigner ces monuments, ces édifices, ou lieux de rassemblement, par des signes visibles, qui consisteront en grands panneaux rectangulaires rigides, partagés, suivant une des diagonales, en deux triangles de couleur, noire en haut et blanche en bas.

## Art. 6.

Sauf le cas où les exigences militaires ne le permettraient pas, le commandant de la force navale assaillante doit, avant d'entreprendre le bombardement, faire tout ce qui dépend de lui pour avertir les autorités.

## Art. 7.

Il est interdit de livrer au pillage une ville ou localité même prise d'assaut.

CHAPTER II.—*General Provisions.*

## Art. 5.

In bombardments by naval forces all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, provided that they are not used at the time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white.

## Art. 6.

Unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities.

## Art. 7.

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

CHAPITRE III.—*Dispositions Finales.*

## Art. 8.

Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances Contractantes et seulement si les belligérants sont tous parties à la Convention.

## Art. 9.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

## Art. 10.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

## Art. 11.

La présente Convention produira effet pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui ad-

CHAPTER III.—*Final Provisions.*

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## Art. 8.

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

## Art. 9.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

## Art. 10.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of accession, mentioning the date on which it received the notification.

## Art. 11.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subse-

**Ch. XIV** béleront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

**Art. 12.**

S'il arrivait qu'une des Puissances Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

**Art. 13.**

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 9, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 10, alinéa 2) ou de dénonciation (Article 12, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

This Convention was signed at The Hague by the Plenipotentiaries of forty-one States.

The Ratifications of the following States have, up to the present, been deposited:—

Great Britain.<sup>1</sup>  
Germany.<sup>1</sup>  
United States.  
Austria-Hungary.  
Denmark.  
Mexico.  
Netherlands.  
Russia.

Sweden.  
Bolivia.  
Salvador.  
Haiti.  
Panama.  
Japan<sup>1</sup>.  
Roumania.  
Cuba.

Guatemala.  
Portugal.  
France.<sup>1</sup>  
Luxemburg.  
Belgium.  
Norway.  
Siam.  
Switzerland.  
Brazil.

The following Accessions have been notified:—

China.  
Liberia.

Nicaragua.  
Finland.

Spain.

quently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

**Art. 12.**

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

**Art. 13.**

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 9, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 10, paragraph 2) or of denunciation (Article 12, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

<sup>1</sup> Under reserve of Article 1, para. 2.

## APPENDIX 9.

## INTERNATIONAL DECLARATION PROHIBITING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS.

*Signed at The Hague, 18th October, 1907.**(British Ratification deposited at The Hague, 27th November, 1909.)*

(Translation.)

*Déclaration relative à l'Interdiction de lancer des Projectiles et des Explosifs du Haut de Ballons.*

Les Soussignés, Plénipotentiaires des Puissances conviées à la Deuxième Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Petersbourg du 29 Novembre (11 Décembre), 1868, et désirant renouveler la Déclaration de la Haye du 29 Juillet, 1899, arrivée à expiration,

## Déclarent:

Les Puissances Contractantes consentent, pour une période allant jusqu'à la fin de la Troisième Conférence de la Paix, à l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où, dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt des ratifications un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets

*Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons.*

The Undersigned, Plenipotentiaries of the Powers invited to the Second International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868, and being desirous of renewing the Declaration of The Hague of the 29th July, 1899, which has now expired,

## Declare:

The Contracting Powers agreed to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them.

It shall cease to be binding from the moment when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A Protocol shall be drawn up recording the receipt of the ratifications, of which a duly certified copy shall be sent, through the diplomatic channel, to all the Contracting Powers.

Non-Signatory Powers may accede to the present Declaration. To do so, they must make known their accession to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall only operate on the expiry

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Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi les Plénipotentiaires ont revêtu la présente Déclaration de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

of one year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only operate in respect of the denouncing Power.

In faith whereof the Plenipotentiaries have appended their signatures to the present Declaration.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Contracting Powers.

This Convention was signed at The Hague by the Plenipotentiaries of 27 States.<sup>1</sup>

The Ratifications of the following States have up to the present been deposited:—

Great Britain.	Salvador.	Luxemburg.
United States.	Haiti.	Norway.
China.	Panama.	Siam.
Netherlands.	Portugal.	Switzerland.
Bolivia.	Belgium.	Brazil.

The following Accessions have been notified:—

Nicaragua.	Finland.	Liberia.
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## APPENDIX 10.

### FORM OF ARMISTICE (No. 1).<sup>2</sup>

#### *Armistice between two opposing Forces.*

A.B. authorised by C.D. Commander-in-Chief His Britannic Majesty's Forces in and E.F. authorised by F.H. Commander-in-Chief the troops in agree to the following Articles:—

**Art. 1.** On publication of this armistice, hostilities shall cease between the British and forces at all points along the frontier of

and  
**Art. 2.** The armistice shall continue until noon on the day of and until such further time as is hereinafter mentioned.

**Art. 3.** Either side may at any time on or after the said day of give six days' notice of its intention to determine the armistice and the armistice shall be determined at the expiration of such six days. Notice shall be given by writing, stating the intention to determine the armistice, and sent from the headquarters of one army to the headquarters of the other army. In reckoning time for the purpose of the said six days' notice, the day on which the notice is given, at whatever hour the same may be given, shall be reckoned as an entire day, and the armistice shall expire at midnight on the fifth day succeeding the day on which the notice is given.

**Art. 4.** The lines of demarcation shown on the attached map shall be strictly adhered to during the armistice. The territory lying between the two lines of demarcation shall be strictly neutral, and any advance into it by any member

<sup>1</sup> These included those of Great Britain, the United States, and Austria-Hungary, and Turkey. Those of Chile, Denmark, France, Germany, Italy, Japan, Roumania, Russia, Serbia, Spain and Sweden did not sign it.

<sup>2</sup> This and the two following forms are a revision of those given by Thring.

of either army is prohibited except for the purposes of communication between the two armies. Neither army shall extend its line in a or direction beyond the points shown as the extremities of their respective lines.

Art. 5. Subject to the restrictions mentioned in the 4th art., as respects making an advance into the neutral territory, either army may take measures to strengthen its position, and may receive reinforcements and stores of warlike and other material, and may do any other act not being an act of direct hostility.

Art. 6. During the two days following the day on which this armistice is ratified, burial parties from both armies shall be permitted to visit the field of battle of the instant, for the purpose of burying the dead.

Art. 7. The main road from A. to B. via C. will be used for communication between the Commanders-in-Chief of the two armies.

Art. 8. During the continuance of the armistice, the peaceful inhabitants of the country shall be allowed to pursue their occupations, and to buy from or sell to either army provisions or goods, but any measures consistent with the observance of the articles of the armistice in relation to the neutral territory may be taken by either army to prevent inhabitants, after entering the lines of or obtaining information respecting one army from passing or carrying information to the other army.

Art. 9. This armistice shall come into force immediately on its ratification by the Commanders-in-Chief of the two armies, and officers shall be despatched with all speed, from the headquarters of each army, to give notice of the armistice at all points along the line.

#### APPENDIX 11.

##### FORM OF ARMISTICE (No. 2).

###### *Between Besieging Force and Garrison.*

A.B., General, Commander-in-Chief of His Britannic Majesty's Forces now in and C.D., General, Commander-in-Chief of the Garrison of agree to the following Articles :—

Art. 1. An armistice between the British troops investing and the troops forming the garrison of shall begin at noon on the 15th instant; and shall end at noon on the 25th instant.

Art. 2. White flags shall be hoisted simultaneously at the beginning of the armistice, the one at within the British lines, and the other at Fort

The flags shall be kept flying during the continuance of the armistice, and shall be lowered simultaneously at its conclusion.

Art. 3. Provisions to the extent of rations shall be supplied daily for the use of the garrison by the besiegers on payment of such sums as may be agreed upon as the value thereof by commissioners to be appointed by the above-named Commanders-in-Chief respectively. The provisions shall be delivered to persons authorised to demand the same by the general commanding the garrison, at such times, and in such places in front of the British lines, as may be agreed upon by the above-named Commanders-in-Chief, and shall be conveyed to the garrison by the persons authorised as above stated.

Art. 4. Save in so far as is provided by art. 3, or as may be agreed upon between the above-named Commanders-in-Chief, it is agreed that the garrison shall not attempt to obtain succour, and that no communication whatever shall, during the armistice, take place between the garrison, whether friend or enemy, and a space of around the fortification shall be considered neutral ground, and no person whatever, whether he be a stranger or belonging to the garrison, or to the besieging army, shall be allowed to enter on such space without the permission of the above-named Commanders-in-Chief.

Art. 5. General, commanding the garrison, engages on behalf of the garrison not to repair the fortifications, or to undertake any new siege-works, or do any act or thing whatsoever calculated to place the garrison in a better position in regard to its defence; and General, on behalf of the British troops, engages not to undertake any siege-works, or to make any hostile movement against the garrison, but it is understood that he is at liberty to obtain fresh supplies of provisions or reinforcements of troops.

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## APPENDIX 12.

## FORM OF SUSPENSION OF ARMS FOR THE BURIAL OF THE DEAD, &amp;c.

General A.B., commanding the British forces at                      and General C.D.,  
commanding the forces at                      agree as follows:—

Art. 1. A suspension of arms for the space of three hours, beginning at ten o'clock and ending at one o'clock on this                      day of                      is agreed to for the purpose of burying the dead and withdrawing the wounded.

Art. 2. The beginning of the suspension of arms shall be notified by two white flags hoisted simultaneously, the one within the British lines, and the other within                      lines. The white flags shall continue flying during the suspension of arms, and such flags shall be lowered simultaneously as a signal of the conclusion of the suspension of arms.

Art. 3. All firing shall cease during the suspension of arms.

Art. 4. The British troops shall not, during the suspension of arms, advance beyond the                      line, and the                      troops shall not advance beyond the                      line. The space between the two lines shall be open to all persons engaged in burying the dead, or in attending to the wounded, or on carrying away the dead or the wounded, but to no other persons.

## APPENDIX 13.

ARMISTICE AGREED ON BY JAPAN AND RUSSIA AT PORTSMOUTH (U.S.A.)  
ON 5TH SEPTEMBER, 1905.<sup>1</sup>

The undersigned plenipotentiaries of Japan and Russia, duly authorised to that effect by their respective governments, have agreed on the following terms of the armistice which will remain in force until the execution of the treaty of peace:—

- (1) A certain distance (zone of demarcation) shall be fixed to separate the front of the armies of the two Powers in Manchuria, and also in the Tumen region.
- (2) The naval force of one of the belligerents may not bombard the territory occupied or belonging to the other.
- (3) The taking of maritime prizes will not be interrupted by the armistice.
- (4) During the armistice, no reinforcements may be sent to the theatre of war. Those who are on the way from Japan may not be sent north of Mukden and those on the way from Russia may not be sent south of Harbin.
- (5) The commanders of the military and naval forces will arrange the details of the armistice in accordance with the principles above enunciated.
- (6) The two Governments will issue the order to put this protocol into execution directly after the signature of the treaty of peace.

Signed: Witte.

Signed: Komoura.

Rosen.

Takahura.

The peace was signed 5th September, 1905, at 3.50 p.m.

## APPENDIX 14.

PROTOCOL OF THE CONDITIONS OF THE ARMISTICE CONCLUDED IN  
MANCHURIA ON 13TH SEPTEMBER, 1905.<sup>2</sup>

Art. 1. Fighting is suspended throughout the extent of Manchuria.

Art. 2. The space between the front lines of the Japanese and Russian armies which are indicated on the maps exchanged with the present protocol constitutes the neutral zone.

Art. 3. Every person having the least connection with either of the armies is forbidden to enter the neutral zone on any pretext whatsoever.

Art. 4. The road leading from Shuang-miao-tzu to Sha-ho-tzu is to be employed for communication between the two armies.

<sup>1</sup> Translated from Ariga, 1908, p. 548.

<sup>2</sup> Translated from Ariga, 1908, p. 553.



Art. 5. The present protocol will come into force on the 16th (Russian style 3rd) September, 1905, at mid-day, and will remain in force until the execution of the treaty of peace, signed at Portsmouth by the plenipotentiaries of the two Powers. Ch. XIV

The present protocol is signed by the representatives of the commanders-in-chief of the Japanese and Russian armies in Manchuria, in virtue of the full powers which have been given to them by the said commanders-in-chief.

Done on the road situated close to Sha-ho-tzu the 13th September, 1905, in two texts, Japanese and Russian, each party keeping a Japanese and a Russian text.

Signed: Fukushima,  
Major-General, &c.  
Oranouski,  
Major-General, &c.

## APPENDIX 15.

### JAPANESE PROJECT FOR THE ARMISTICE IN THE TUMEN REGION.<sup>1</sup>

Art. 1. The Japanese and Russian armies in the Tumen region will execute the armistice according to the stipulations of the present convention.

Art. 2. The Japanese army will canton south of the line . . . . The positions of the Russian army will be limited to the north of the line . . . . The region between these two lines will form the neutral zone.

Art. 3. No troops, patrols or men sent on reconnaissance, nor any individual belonging or attached to the army will be permitted to enter the neutral zone.

Art. 4. No preparations for attack or defence will be made near the line limiting the neutral zone. The necessary preparations for cantoning the troops will not be considered as preparations for attack or defence.

Art. 5. No requisitions of coolies, horses or any other objects will be made in the neutral zone.

Art. 6. The Japanese and Russian armies in the Tumen region will both commence to evacuate their troops beyond the lines indicated in art. 2 on the third day and must have completed the evacuation behind the lines by the seventh day from the signing of the present convention.

Art. 7. Once the convention is drawn up, the commanders of the Japanese and Russian armies will order the troops and the officials under their command to execute the armistice, in such a manner that the order may reach them as soon as possible. They will at the same time notify the commanders of the land and sea forces.

Art. 8. This convention will come in force immediately it has been signed by the plenipotentiaries of the Japanese and Russian armies; it will lapse on the execution of the treaty of peace.

Art. 9. The present convention will be drawn up in two Japanese and two Russian texts, each army keeping a text in each language.

(This project was not agreeable to the Russians and an armistice had not been concluded when the treaty of peace was ratified.)

## APPENDIX 16.

### SUSPENSION OF ARMS AT THE SIEGE OF BELFORT, 13TH FEBRUARY, 1871.<sup>2</sup>

It has been agreed by the undersigned:—Captain Krafft of the Auxiliary Engineers, and Captain von Schultzenhof, General Staff of the besieging army, both furnished with full powers by Colonel Denfert-Rochereau, Commandant of Belfort, and by Lieutenant-General von Treskow, Commandant of the besieging corps.

As follows:—

- (1) Lieutenant-General von Treskow will send a telegram to Versailles to acquaint the Imperial Chancellor Count Bismarck that Colonel Denfert-Rochereau requires direct instructions from his government as regards the surrender of the fortress.

<sup>1</sup> Translated from Ariga, 1908, p. 560.

<sup>2</sup> Translated from *La défense de Belfort*, pp. 429–30.

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- (2) Colonel Denfert-Rochereau will send an officer to Bâle to await the telegraphic instructions from the French Government.
- (3) Until the return of this officer there will be a suspension of arms between the besieged and besiegers, beginning the 13th February at 11 p.m. Nevertheless the suspension of arms may be denounced at any moment twelve hours before the time intended for the resumption of hostilities.
- (4) During the suspension of arms the two parties shall remain in their present positions. The limits thus traced shall not be crossed, and, moreover, there shall be no communication on the part of civilians between the fortress and the outside.
- (5) Colonel Denfert-Rochereau engages to inform Lieutenant-General von Treskow with the least possible delay of the decision he makes after receiving the instructions of the French Government.

The present convention has been made in duplicate original, one text in German and the other in French.

Signed: Krafft.

Von Schultzenndorf.  
13th February, 1871.

## APPENDIX 17.

## TERMS OF ARMISTICE WITH GERMANY, 11th NOVEMBER, 1918.

Between MARSHAL FOCH, Commander-in-Chief of the Allied Armies, acting in the name of the Allied and Associated Powers, with ADMIRAL WEMYSS, First Sea Lord, on the one hand, and

HERR ERZBERGER, Secretary of State, President of the German Delegation,

COUNT VON OBERNDORFF, Envoy Extraordinary and Minister Plenipotentiary,

MAJOR-GENERAL VON WINTERFELDT,

CAPTAIN VANSELOW (German Navy),

duly empowered and acting with the concurrence of the German Chancellor on the other hand.

An Armistice has been concluded on the following conditions:—

## CONDITIONS OF THE ARMISTICE CONCLUDED WITH GERMANY.

## A.—CLAUSES RELATING TO THE WESTERN FRONT.

I.—Cessation of hostilities by land and in the air 6 hours after the signing of the Armistice.

II.—Immediate evacuation of the invaded countries—Belgium, France, Luxemburg, as well as Alsace-Lorraine—so ordered as to be completed within 15 days from the signature of the Armistice.

German troops which have not left the above-mentioned territories within the period fixed shall be made prisoners of war.

Occupation by the Allied and United States Forces jointly shall keep pace with the evacuation in these areas.

All movements of evacuation and occupation shall be regulated in accordance with a Note (Annexe 1) determined at the time of the signing of the Armistice.

III.—Repatriation, beginning at once, to be completed within 15 days, of all inhabitants of the countries above enumerated (including hostages, persons under trial, or condemned).

IV.—Surrender in good condition by the German Armies of the following equipment:—

5,000 guns (2,500 heavy, 2,500 field).

25,000 machine guns.

3,000 trench mortars.

1,700 aeroplanes (fighters, bombers—firstly all D. 7's and night-bombing machines).

The above to be delivered *in situ* to the Allied and United States troops in accordance with the detailed conditions laid down in the Note (Annexe 1) determined at the time of the signing of the Armistice.

V.—Evacuation by the German Armies of the districts on the left bank of the Rhine. These districts on the left bank of the Rhine shall be administered by the local authorities under the control of the Allied and United States Armies of Occupation.

The occupation of these territories by Allied and United States troops shall be assured by garrisons holding the principal crossings of the Rhine (Mainz, Coblenz, Cologne), together with bridgeheads at these points of a 30-kilometre (about 19 miles) radius on the right bank, and by garrisons similarly holding the strategic points of the area.

A neutral zone shall be reserved on the right bank of the Rhine, between the river and a line drawn parallel to the bridgeheads and to the river and 10 kilometres (6½ miles) distant from them, between the Dutch frontier and the Swiss frontier.

The evacuation by the enemy of the Rhine districts (right and left banks) shall be so ordered as to be completed within a further period of 16 days, in all 31 days after the signing of the Armistice.

All movements of evacuation and occupation shall be regulated according to the Note (Annexe 1) determined at the time of the signing of the Armistice.

VI.—In all territories evacuated by the enemy, evacuation of the inhabitants shall be forbidden; no damage or harm shall be done to the persons or property of the inhabitants.

No person shall be prosecuted for having taken part in any military measures previous to the signing of the Armistice.

No destruction of any kind to be committed.

Military establishments of all kinds shall be delivered intact, as well as military stores, food, munitions and equipment, which shall not have been removed during the periods fixed for evacuation.

Stores of food of all kinds for the civil population, cattle, &c., shall be left *in situ*.

No measure of a general character shall be taken, and no official order shall be given which would have as a consequence the depreciation of industrial establishments or a reduction of their personnel.

VII.—Roads and means of communications of every kind, railroads, waterways, roads, bridges, telegraphs, telephones, shall be in no manner impaired.

All civil and military personnel at present employed on them shall remain.

5,000 locomotives and 150,000 wagons, in good working order, with all necessary spare parts and fittings, shall be delivered to the Associated Powers within the period fixed in Annexe No. 2 (not exceeding 31 days in all).

5,000 motor lorries are also to be delivered in good condition within 36 days.

The railways of Alsace-Lorraine shall be handed over within 31 days, together with all personnel and material belonging to the organization of this system.

Further, the necessary working material in the territories on the left bank of the Rhine shall be left *in situ*.

All stores of coal and material for the upkeep of permanent way, signals and repair shops shall be left *in situ* and kept in an efficient state by Germany, so far as the working of the means of communication on the left bank of the Rhine is concerned.

All lighters taken from the Allies shall be restored to them.

The Note attached as Annexe 2 defines the details of these measures.

VIII.—The German Command shall be responsible for revealing within 48 hours after the signing of the Armistice, all mines or delay-action fuses disposed on territories evacuated by the German troops, and shall assist in their discovery and destruction.

The German Command shall also reveal all destructive measures that may have been taken (such as poisoning or pollution of wells, springs, &c.).

Breaches of these clauses will involve reprisals.

IX.—The right of requisition shall be exercised by the Allied and United States armies in all occupied territories, save for settlement of accounts with authorized persons.

The upkeep of the troops of occupation in the Rhine districts (excluding Alsace-Lorraine) shall be charged to the German Government.

X.—The immediate repatriation, without reciprocity, according to detailed conditions which shall be fixed, of all Allied and United States prisoners of war, including those under trial and condemned. The Allied Powers and the United States of America shall be able to dispose of these prisoners as they think fit. This condition annuls all other conventions regarding prisoners of war, including that of July, 1918, now being ratified. However, the return of German prisoners of war interned in Holland and Switzerland shall continue as heretofore. The return of German prisoners of war shall be settled at the conclusion of the Peace preliminaries.

XI.—Sick and wounded who cannot be removed from territory evacuated by the German forces shall be cared for by German personnel, who shall be left on the spot with the material required.

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## B.—CLAUSES RELATING TO THE EASTERN FRONTIERS OF GERMANY.

XII.—All German troops at present in any territory which before the war formed part of Austria-Hungary, Roumania or Turkey, shall withdraw within the frontiers of Germany as they existed on 1st August, 1914, and all German troops at present in territories, which before the war formed part of Russia, must likewise return to within the frontiers of Germany as above defined, as soon as the Allies shall think the moment suitable, having regard to the internal situation of these territories.

XIII.—Evacuation of German troops to begin at once, and all German instructors, prisoners and agents, civilian as well as military, now on the territory of Russia (frontiers as defined on 1st August, 1914), to be recalled.

XIV.—German troops to cease at once all requisitions and seizures and any other coercive measures with a view to obtaining supplies intended for Germany in Roumania and Russia (frontiers as defined on 1st August, 1914).

XV.—Annulment of the treaties of Bucharest and Brest-Litovsk and of the supplementary treaties.

XVI.—The Allies shall have free access to the territories evacuated by the Germans on their Eastern frontier, either through Danzig or by the Vistula, in order to convey supplies to the populations of these territories or for the purpose of maintaining order.

## C.—CLAUSE RELATING TO EAST AFRICA.

XVII.—Evacuation of all German forces operating in East Africa within a period specified by the Allies.

## D.—GENERAL CLAUSES.

XVIII.—Repatriation without reciprocity, within a maximum period of one month, in accordance with detailed conditions hereafter to be fixed, of all interned civilians, including hostages and persons under trial and condemned, who may be subjects of Allied or Associated States other than those mentioned in Clause III.

## FINANCIAL CLAUSES.

XIX.—With the reservation that any subsequent concessions and claims by the Allies and United States remain unaffected, the following financial conditions are imposed:—

Reparation for damage done.

While the Armistice lasts, no public securities shall be removed by the enemy which can serve as a pledge to the Allies to cover reparation for war losses.

Immediate restitution of the cash deposit in the National Bank of Belgium and, in general, immediate return of all documents, specie, stocks, shares, paper money, together with plant for the issue thereof, affecting public or private interests in the invaded countries.

Restitution of the Russian and Roumanian gold yielded to Germany or taken by that Power.

This gold to be delivered in trust to the Allies until peace is concluded.

## E.—NAVAL CONDITIONS.

XX.—Immediate cessation of all hostilities at sea, and definite information to be given as to the position and movements of all German ships.

Notification to be given to neutrals that freedom of navigation in all territorial waters is given to the Navies and Mercantile Marines of the Allied and Associated Powers, all questions of neutrality being waived.

XXI.—All Naval and Mercantile Marine prisoners of war of the Allied and Associated Powers in German hands to be returned without reciprocity.

XXII.—To surrender at the ports specified by the Allies and the United States all submarines at present in existence (including all submarine cruisers and minelayers), with armament and equipment complete. Those that cannot put to sea shall be deprived of armament and equipment, and shall remain under the supervision of the Allies and the United States. Submarines ready to put to sea shall be prepared to leave German ports immediately on receipt of a wireless order to sail to the port of surrender, the remainder to follow as early as possible. The conditions of this Article shall be completed within 14 days of the signing of the Armistice.

XXIII.—The following German surface warships, which shall be designated by the Allies and the United States of America, shall forthwith be disarmed and thereafter interned in neutral ports, or, failing them, Allied ports, to be designated by the Allies and the United States of America, and placed under

the surveillance of the Allies and the United States of America, only care **Ch. XIV** and maintenance parties being left on board, namely:—

- 6 battle cruisers.
- 10 battleships.
- 8 light cruisers (including two minelayers).
- 50 destroyers of the most modern type.

All other surface warships (including river craft) are to be concentrated in German Naval bases, to be designated by the Allies and the United States of America, completely disarmed and placed under the supervision of the Allies and the United States of America. All vessels of the Auxiliary Fleet are to be disarmed. All vessels specified for internment shall be ready to leave German ports seven days after the signing of the Armistice. Directions for the voyage shall be given by wireless.

XXIV.—The Allies and the United States of America shall have the right to sweep up all minefields and destroy all obstructions laid by Germany outside German territorial waters, and the positions of these are to be indicated.

XXV.—Freedom of access to and from the Baltic to be given to the Navies and Mercantile Marines of the Allied and Associated Powers. This to be secured by the occupation of all German forts, fortifications, batteries and defence works of all kinds in all the routes from the Cattegat into the Baltic, and by the sweeping up and destruction of all mines and obstructions within and without German territorial waters without any questions of neutrality being raised by Germany, and the positions of all such mines and obstructions to be indicated, and the plans relating thereto are to be supplied.

XXVI.—The existing blockade conditions set up by the Allied and Associated Powers are to remain unchanged, and all German merchant ships found at sea are to remain liable to capture. The Allies and United States contemplate the provisioning of Germany during the Armistice as shall be found necessary.

XXVII.—All Aerial Forces are to be concentrated and immobilized in German bases to be specified by the Allies and the United States of America.

XXVIII.—In evacuating the Belgian coasts and ports, Germany shall abandon, *in situ* and intact, the port material and material for inland waterways, also all merchant ships, tugs and lighters, all Naval aircraft and air materials and stores, all arms and armaments and all stores and apparatus of all kinds.

XXIX.—All Black Sea ports are to be evacuated by Germany; all Russian warships of all descriptions seized by Germany in the Black Sea are to be handed over to the Allies and the United States of America; all neutral merchant ships seized in the Black Sea are to be released; all warlike and other materials of all kinds seized in those ports are to be returned, and German materials as specified in Clause XXVIII are to be abandoned.

XXX.—All merchant ships at present in German hands belonging to the Allied and Associated Powers are to be restored to ports specified by the Allies and the United States of America without reciprocity.

XXXI.—No destruction of ships or of materials to be permitted before evacuation, surrender or restoration.

XXXII.—The German Government shall formally notify all the neutral Governments, and particularly the Governments of Norway, Sweden, Denmark and Holland, that all restrictions placed on the trading of their vessels with the Allied and Associated countries, whether by the German Government or by private German interests, and whether in return for specific concessions, such as the export of shipbuilding materials, or not, are immediately cancelled.

XXXIII.—No transfers of German merchant shipping of any description to any neutral flag are to take place after signature of the Armistice.

#### F.—DURATION OF ARMISTICE.

XXXIV.—The duration of the Armistice is to be 36 days, with option to extend. During this period, on failure of execution of any of the above clauses, the Armistice may be repudiated by one of the contracting parties on 48 hours' previous notice. It is understood that failure to execute Articles III and XVIII completely in the periods specified is not to give reason for a repudiation of the Armistice, save where such failure is due to malice aforethought.

To ensure the execution of the present convention under the most favourable conditions, the principle of a permanent International Armistice Commission

**Ch. XIV** is recognized. This Commission shall act under the supreme authority of the High Command, military and naval, of the Allied Armies.

The present Armistice was signed on the 11th day of November, 1918, at 5 o'clock a.m. (French time).

(Signed) F. FOCH.  
R. E. WEMYSS.

ERZBERGER.  
OBERNDORFF.  
WINTERFELDT.  
VANSELOW.

11th November, 1918.

The representatives of the Allies declare that, in view of fresh events, it appears necessary to them that the following condition shall be added to the clauses of the Armistice:—

"In case the German ships are not handed over within the periods specified, the Governments of the Allies and of the United States shall have the right to occupy Heligoland to ensure their delivery."

(Signed) R. E. WEMYSS. F. FOCH.  
*Admiral.*

"The German delegates declare that they will forward this declaration to the German Chancellor, with the recommendation that it be accepted, accompanying it with the reasons by which the Allies have been actuated in making this demand."

(Signed) ERZBERGER.  
OBERNDORFF.  
WINTERFELDT.  
VANSELOW.

#### ANNEXE No. 1.

I.—The evacuation of the invaded territories, Belgium, France and Luxemburg, and also of Alsace-Lorraine, shall be carried out in three successive stages according to the following conditions:—

*1st stage.*—Evacuation of the territories situated between the existing front and line No. 1 on the enclosed map, to be completed within 5 days after the signature of the Armistice.

*2nd stage.*—Evacuation of territories situated between line No. 1 and line No. 2, to be carried out within 4 further days (9 days in all after the signing of the Armistice).

*3rd stage.*—Evacuation of the territories situated between line No. 2 and line No. 3, to be completed within 6 further days (15 days in all after the signing of the Armistice).

Allied and United States troops shall enter these various territories on the expiration of the period allowed to the German troops for the evacuation of each.

In consequence, the Allied troops will cross the present German front as from the 6th day following the signing of the Armistice, line No. 1 as from the 10th day, and line No. 2 as from the 16th day.

II.—*Evacuation of the Rhine district.*—This evacuation shall also be carried out in several successive stages:—

(1) Evacuation of territories situated between lines 2 and 3 and line 4, to be completed within 4 further days (19 days in all after the signing of the Armistice).

(2) Evacuation of territories situated between lines 4 and 5 to be completed within 4 further days (23 days in all after the signing of the Armistice).

(3) Evacuation of territories situated between lines 5 and 6 (line of the Rhine) to be completed within 4 further days (27 days in all after the signing of the Armistice).

(4) Evacuation of the bridgeheads and of the neutral zone on the right bank of the Rhine to be completed within 4 further days (31 days in all after the signing of the Armistice).

The Allied and United States Army of Occupation shall enter these various territories after the expiration of the period allowed to the German troops for the evacuation of each; consequently the Army will cross line No. 3, 20 days after the signing of the Armistice. It will cross line No. 4 as from

the 24th day after the signing of the Armistice: Line No. 5 as from the 28th day: Line No. 6 (Rhine) the 32nd day, in order to occupy the bridgeheads.

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III.—*Surrender by the German Armies of war material specified by the Armistice.*—This war material shall be surrendered according to the following conditions:—The first half before the 10th day, the second half before the 20th day. This material shall be handed over to each of the Allied and United States Armies by each larger tactical group of the German Armies in the proportions which may be fixed by the permanent International Armistice Commission.

#### ANNEXE No. 2.

Conditions regarding communications, railways, waterways, roads, river and sea ports, and telegraphic and telephonic communications:—

I.—All communications as far as the Rhine, inclusive, or comprised, on the right bank of this river, within the bridgeheads occupied by the Allied Armies shall be placed under the supreme and absolute authority of the Commander-in-Chief of the Allied Armies, who shall have the right to take any measure he may think necessary to assure their occupation and use. All documents relative to communications shall be held ready for transmission to him.

II.—All the material and all the civil and military personnel at present employed in the maintenance and working of all lines of communication are to be maintained in their entirety upon these lines in all territories evacuated by the German troops.

All supplementary material necessary for the upkeep of these lines of communication in the districts on the left bank of the Rhine shall be supplied by the German Government throughout the duration of the Armistice.

III.—*Personnel.*—The French and Belgian personnel belonging to the services of the lines of communication, whether interned or not, are to be returned to the French and Belgian Armies during the 15 days following the signing of the Armistice. The personnel belonging to the organization of the Alsace-Lorraine railway system is to be maintained or reinstated in such a way as to ensure the working of the system.

The Commander-in-Chief of the Allied Armies shall have the right to make all changes and substitutions that he may desire in the personnel of the lines of communication.

IV.—*Material.*—(a) *Rolling stock.*—The rolling stock handed over to the Allied Armies in the zone comprised between the present front and Line No. 3, not including Alsace-Lorraine, shall amount at least to 5,000 locomotives and 150,000 wagons. This surrender shall be carried out within the period fixed by Clause 7 of the Armistice and under conditions, the details of which shall be fixed by the permanent International Armistice Commission.

All this material is to be in good condition and in working order, with all the ordinary spare parts and fittings. It may be employed together with the regular personnel, or with any other, upon any part of the railway system of the Allied Armies.

The material necessary for the working of the Alsace-Lorraine railway system is to be maintained or replaced for the use of the French Army.

The material to be left *in situ* in the territories on the left bank of the Rhine, as well as that on the inner side of the bridgeheads, must permit of the normal working of the railways in these districts.

(b) *Permanent way, signals and workshops.*—The material for signals, machine tools and tool outfits, taken from the workshops and depôts of the French and Belgian lines, are to be replaced under conditions, the details of which are to be arranged by the permanent International Armistice Commission.

The Allied Armies are to be supplied with railroad material, rails, incidental fittings, plant, bridge-building material and timber necessary for the repair of the lines destroyed beyond the present front.

(c) *Fuel and maintenance material.*—The German Government shall be responsible throughout the duration of the Armistice for the release of fuel and maintenance material to the depôts normally allotted to the railways in the territories on the left bank of the Rhine.

V.—*Telegraphic and Telephonic Communications.*—All telegraphs, telephones, and fixed W/T stations are to be handed over to the Allied Armies, with all the civil and military personnel and all their material, including all stores on the left bank of the Rhine.

**Ch. XIV** Supplementary stores necessary for the upkeep of the system are to be supplied throughout the duration of the Armistice by the German Government according to requirements.

The Commander-in-Chief of the Allied Armies shall place this system under military supervision and shall ensure its control, and shall make all changes and substitutions in personnel which he may think necessary.

He will send back to the German Army all the military personnel who are not in his judgment necessary for the working and upkeep of the railway.

All plans of the German telegraphic and telephonic systems shall be handed over to the Commander-in-Chief of the Allied Armies.

#### CONVENTION PROLONGING THE ARMISTICE WITH GERMANY, 13TH DECEMBER, 1918.

##### CONVENTION.

The undersigned, in virtue of the powers with which they were endowed for the signing of the Armistice of the 11th November, 1918, have concluded the following additional agreement:—

1. The duration of the Armistice signed on the 11th November, 1918, has been prolonged for a month, i.e., till 5 a.m. on the 17th January, 1919.

The one month's extension will be further extended until the conclusion of Peace preliminaries, provided this arrangement meets with the approbation of the Allied Governments.

2. The clauses of the Convention (11th November) which have been incompletely fulfilled will be carried out during the period of extension, according to the conditions laid down by the Permanent International Armistice Commission following the orders given by the Allied Generalissimo.

3. The following clause is added to the Convention of the 11th November, 1918:—

"From now onwards the Generalissimo reserves to himself the right of occupying (when he deems it advisable), as an additional guarantee, the neutral zone on the right bank of the Rhine, north of the bridgehead of Cologne, and as far as the Dutch frontier.

"Six days' notice will be given by the Generalissimo before the occupation comes into effect."

Trèves, 13th December, 1918.

(Signed) F. FOCH,  
WEMYSS, Admiral.

ERZBERGER,  
A. OBERNDORFF,  
WINTERFELDT,  
VANSELOW.

#### CONVENTION PROLONGING THE ARMISTICE WITH GERMANY, 16TH JANUARY, 1919.

##### CONVENTION.

The undersigned Plenipotentiaries (Admiral Browning taking the place of Admiral Wemyss), vested with the powers in virtue of which the Armistice Agreement of 11th November, 1918, was signed, have concluded the following supplementary Agreement:—

1. The Armistice of the 11th November, 1918, which was prolonged until the 17th January, 1919, by the Agreement of the 13th December, 1918, shall be again prolonged for one month, that is to say, until the 17th February, 1919, at 5 a.m.

This prolongation of one month shall be extended until the conclusion of the Peace preliminaries, subject to the approval of the Allied Governments.

2. The execution of those clauses of the Agreement of the 11th November which have not been entirely carried out shall be proceeded with and completed during the prolongation of the Armistice, in accordance with the detailed conditions fixed by the Permanent International Armistice Commission on the instructions of the Allied High Command.



3. In substitution of the supplementary railway material specified by [Ch. XIV Tables 1 and 2 of the Spa Protocol of 17th December, *i.e.*, 500 locomotives and 19,000 wagons, the German Government shall supply the following agricultural machinery and instruments:—

400 two-engined steam plough outfits, complete, with suitable ploughs,  
 6,500 drills,  
 6,500 manure distributors,  
 6,500 ploughs,  
 6,500 Brabant ploughs,  
 12,500 harrows,  
 6,500 scarifiers,  
 2,500 steel rollers,  
 2,500 Croskill rollers,  
 2,500 mowing machines,  
 2,500 hay-making machines,  
 3,000 reapers and binders,

or equivalent implements, according to the scale of interchangeability of various kinds of implements considered permissible by the Permanent International Armistice Commission. All this material, which shall be either new, or in very good condition, shall be delivered together with all accessories belonging to each implement, and with the spare parts required for 18 months' use.

The German Armistice Commission shall, between the present date and the 23rd January, supply the Allied Armistice Commission with a list of the material that can be delivered by the 1st March, which must, in principle, constitute not less than one-third of the total quantity. The International Armistice Commission shall, between now and the 23rd January, fix the latest dates of delivery, which shall, in principle, not extend beyond the 1st June.

4. The officers in Germany delegated by the Allied and Associated Powers to organize the evacuation of the prisoners of war belonging to the armies of the Entente, together with representatives of the Relief Associations of the United States, France, Great Britain and Italy, shall form a Commission charged with the care of Russian prisoners of war in Germany.

This Commission, the headquarters of which shall be in Berlin, shall be empowered to deal with the German Government direct, upon instructions from the Allied Governments, regarding all questions relating to Russian prisoners of war.

The German Government shall accord the Commission all travelling facilities necessary for the purpose of investigating the housing conditions and food supply of such prisoners.

The Allied Governments reserve the right to arrange for the repatriation of Russian prisoners of war to any region which they may consider most suitable.

5. *Naval Clauses.*—Article XXII of the Armistice Agreement of the 11th November, 1918, shall be supplemented as follows:—

"In order to ensure the execution of such clause, the German authorities shall be bound to carry out the following conditions:—

All submarines capable of putting to sea, or of being towed, shall be handed over immediately and shall make for Allied ports. Such vessels shall include submarine cruisers, minelayers, relief ships and submarine docks. All submarines which cannot be surrendered shall be completely destroyed or dismantled, under the supervision of the Allied Commissioners.

Submarine construction shall cease immediately, and all submarines in course of construction shall be destroyed or dismantled, under the supervision of the Allied Commissioners."

Article XXIII of the Armistice Agreement of the 11th November, 1918, shall be supplemented as follows:—

"In order to ensure the execution of such clause, the German Commission shall furnish the Inter-Allied Naval Armistice Commission with a complete list of all surface vessels constructed or in course of construction (launched or on the stocks), specifying probable dates of completion."

Article XXX of the Armistice Agreement of 11th November, 1918, shall be supplemented as follows:—

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"In order to ensure the execution of such clause, the Allied High Command informs the German High Command that all possible measures must be taken immediately for delivery, in Allied ports, of all Allied merchantmen still detained in German ports."

6. *Restitution of Material carried off from Belgian and French Territories.*—As restitution of material carried off from French and Belgian territory is indispensable for setting factories once more into working order, the following measures shall be carried out, viz.:—

- (a) All machinery, machinery parts, industrial or agricultural plant, accessories of all kinds and, generally, all industrial or agricultural articles carried off by German military or civilian authorities or individuals, under any pretext whatever, from territories formerly occupied by the German armies on the Western front, shall be placed at the disposal of the Allies for the purpose of being returned to their places of origin, should the French and Belgian Governments so desire.

These articles shall be returned without further alteration and undamaged.

- (b) In view of such restitution, the German Government shall immediately furnish the Armistice Commission with all official or private accounts, agreements for sale or hire, or correspondence relating to such articles, together with all necessary declarations or information regarding their existence, origin, adaptation, present condition and locality.
- (c) The delegates of the French or Belgian Government shall cause inventories or examinations of such articles to be made on the spot in Germany, should they think fit.
- (d) The return of such articles shall be effected in accordance with special instructions to be given as required by the French or Belgian authorities.
- (e) With a view to immediate restitution, declarations shall more particularly be made of all stocks of driving belts, electric motors and parts thereof, or plant removed from France or Belgium and existing in dépôt parks, railways, ships and factories.
- (f) The furnishing of the particulars referred to in Articles 3 and 6 hereof shall commence within 8 clear days from the 20th January, 1919, and shall be completed in principle before the 1st April, 1919.

7. As a further guarantee, the Supreme Allied Command reserves to itself the right to occupy, whenever it shall consider this desirable, the sector of the fortress of Strassburg formed by the fortifications on the right bank of the Rhine, with a strip of territory extending from 5 to 10 kilometres in front of such fortifications, within the boundaries defined on the map appended hereto.

The Supreme Allied Command shall give 6 days' notice prior to such occupation, which shall not be preceded by any destruction of material or of buildings.

The limits of the neutral zone will, therefore, be advanced by 10 kilometres.

8. In order to secure the provisioning of Germany and of the rest of Europe, the German Government shall take all necessary steps to place the German fleet, for the duration of the Armistice, under the control and the flag of the Allied Powers and the United States, who shall be assisted by a German delegate.

This arrangement shall in no wise affect the final disposal of such vessels. The Allies and the United States shall, if they consider this necessary, replace the crews either entirely or in part, and the officers and crews so replaced shall be repatriated to Germany.

Suitable compensation, to be fixed by the Allied Governments, shall be made for the use of such vessels.

All questions of details, as also any exceptions to be made in the case of certain types of vessel, shall be settled by a special agreement to be concluded immediately.

Trèves, 16th January, 1919.

(Signed) FOCH.  
BROWNING.

ERZBERGER.  
OBERNDORFF.  
VON WINTERFELDT.  
VANSELOW.

CONVENTION PROLONGING THE ARMISTICE WITH GERMANY,  
16TH FEBRUARY, 1919

## Ch. XIV

## CONVENTION.

The undersigned Plenipotentiaries, possessed of the powers in virtue of which the Armistice Agreement of 11th November, 1918, was signed, have concluded the following additional agreement:—

Admiral Wemyss being replaced by Admiral Browning, General v. Winterfeldt, by General v. Hammerstein, and the Minister Plenipotentiary Count v. Oberndorff by the Minister Plenipotentiary v. Haniel.

I.—The Germans are to cease all hostilities against the Poles at once, whether in the district of Posen or any other district. With this end in view, they are forbidden to allow their troops to cross the following line—the old frontier between East and West Prussia and Russia as far as Louisenfelde, from thence the line west of Louisenfelde, west of Gr. Neudorff, south of Brzosa, north of Schubin, north of Exin, south of Samotschin, south of Chodsziesen, north of Czarnikau, west of Miala, west of Birnbaum, west of Bentschen, west of Wollstein, north of Lissa, north of Rawitsch, south of Krotoschin, west of Adeinaw, west of Schildberg, north of Doruchow, to the Silesian frontier.

II.—The Armistice of 11th November, prolonged by the Agreements of 13th December, 1918, and 16th January, 1919, until 17th February, 1919, is further prolonged for a short period, the date of expiry not being given, the Allied Powers and those associated with them reserving to themselves the right to terminate the period at 3 days' notice.

III. The carrying out of those clauses of the Agreement of 11th November, 1918, and of the additional Agreements of 13th December, 1918, and 16th January, 1919, the terms of which have not yet been fully carried into effect, will be continued and completed during the prolongation of the Armistice, according to detailed arrangements made by the Permanent Armistice Commission, acting on instructions issued by the Supreme Allied Command.

Trèves, 16th February, 1919.

ERZBERGER.

FREIHERR v. HAMMER-STEIN

von HANIEL.

VANSELOW.

(Sd.) FOCH.  
BROWNING.

## APPENDIX 18.

THE TERMS OF THE CAPITULATION OF PORT ARTHUR, 1904.<sup>1</sup>

Art. I. The military and naval forces of Russia in the fortress and harbour of Port Arthur, as well as the volunteers and the officials, shall all become prisoners.

Art. II. The forts and fortifications of Port Arthur, the warships and other craft, including torpedo craft, the arms, the ammunition, the horses, all and every material for warlike use, shall be handed over as they are to the Japanese Army.

Art. III. When the above two articles are agreed to, the following steps shall be taken by way of guarantee, namely, by noon on the 3rd instant all garrisons shall be withdrawn from fortifications and forts at I-zu-shan, Hsiao-an-tzu-shan, Ta-an-tzu-shan, and all the highlands on the south-east of these, and the said fortifications and forts shall be handed over to the Japanese Army.

Art. IV. Should it be recognized that the Russian military or naval forces destroy or take any other steps to alter the condition of the things enumerated in Art. II and actually existing at the time of the signature of this Agreement, these negotiations shall be broken off and the Japanese army will break off negotiation and resume freedom of action.

Art. V. The officers of the Russian military and naval forces of Port Arthur shall compile and hand to the Japanese army maps showing the arrangement of the defences, the positions of mines and torpedoes or other

<sup>1</sup> The original English text, given in Takahashi, 1908, pp. 211-13.

**Ch. XIV** dangerous objects, as well as lists of the organization of the naval and military forces in Port Arthur, nominal rolls of the military and naval officers, their ranks or grades, similar rolls relating to the warships, lists of the ships of all descriptions and their crews, and tables of the non-combatants, male and female, their nationalities and their occupations.

**Art. VI.** The arms (including those in the hands of the forces), the ammunition, and all material for war uses (except private property) shall be all left in their present positions. Rules relating to the handing over and receipt of these objects shall be arranged by commissioners from the Russian and Japanese armies.

**Art. VII.** The Japanese army, as an honour to the brave defence made by the Russian army, will allow the officers of the Russian military and naval forces and the officials attached to the said forces to retain their swords, together with all privately owned articles directly necessary for daily existence. Further, with regard to the said officers, officials, and volunteers, such of them as solemnly pledge themselves in writing not to bear arms again until the close of the present war, and not to perform any act of whatsoever kind detrimental to the interests of Japan, shall be permitted to return to their country, and one soldier shall be allowed to accompany each officer of the army or navy. These soldiers shall be required to give a similar pledge.

**Art. VIII.** The disarmed non-commissioned officers and men of the army and navy, as well as of the volunteers, wearing their uniforms, carrying their tents and all privately owned necessities of daily life, shall under the command of their respective officers, assemble at places indicated by the Japanese army. The details of this arrangement will be shown by the commissioners of the Japanese army.

**Art. IX.** The officials of the sanitary and paymaster's departments of the Russian military and naval forces in Port Arthur shall remain and continue to discharge their duties under the control of the Japanese sanitary and paymaster's departments so long as the Japanese army deems it necessary for ministering and affording sustenance to the sick, the wounded, and the prisoners.

**Art. X.** Detailed regulations with reference to the management of the non-combatants, the administration of the town, the performance of financial duties, the transfer of documents relating to these matters, and with reference to the carrying out of the Agreement in other respects, shall be entered in an Appendix to this Agreement. Such Appendix<sup>1</sup> shall have the force of the Agreement itself.

**Art. XI.** Each of the contracting parties shall receive one copy of this Agreement, and it shall become operative from the time of its signature.

#### APPENDIX 19.

*The Duke of Wellington's proclamation on entering France, 22nd June, 1815.  
Malplaquet.*

(Despatches, Vol. VIII, p. 159.)

"Il faut donc qu'ils fournissent aux réquisitions qui leur seront faites de la part des personnes autorisées à les faire, en échange des reçus en forme et ordre; qu'ils se tiennent chez eux paisiblement et qu'ils n'aient aucune correspondance ou communication avec l'usurpateur ennemi, ni avec ses adhérens."

The proclamation on entering France, 1st November, 1813, does not go into details; it merely states that peaceful inhabitants would be well treated and their property respected, and that receipts for requisitions would be given.

#### APPENDIX 20.

##### GERMAN INSTRUCTIONS.

*For the Governor-General of an Occupied Province, 1870.*

(Official Account, Part I, Vol. II, Appendix LIV.)

1. The Governor-General of any portion of hostile territory in our occupation is charged with full administrative and military power within his sphere of command. While carrying out his duties with strictness, he will as far as possible exercise forbearance towards the country and its inhabitants.

<sup>1</sup> A summary of this appendix is given in the note to para. 321.

2. The authority of the hostile state within the district assigned to the Governor-General will cease to exist, and will be replaced by the military control of the latter. Ch. XIV  
—

The instructions of the 25th July for the commanders-in-chief of troops occupying the enemy's country will suffice in this respect also for the Governor-General in his exercise of military authority.

The Governor-General will have under his orders all such troops within the district as may not belong to any particular army.

3. In exercising administrative power, the Governor-General will avail himself of the services of the civil commissaries placed under his orders, and through these, of the civil administrative authorities of his district. Should there be no proper civil administrative authorities he will invest persons with the necessary powers.

4. The administrative powers of the Governor-General and his subordinates will be directed in the first place to the levying of all state taxes, to receive those for the treasury of the Governor-General, and to credit such money as may not be employed for purposes in connection therewith to the general military chest.

5. It further devolves upon the Governor-General to carry out the police regulations which are customary in the country, so far as they are in accordance with military interests.

The civil judicial proceedings are to be conducted in accordance with the laws of the country.

6. Especial attention is to be devoted to the security of all communications necessary for the connection of the armies with their base.

7. Powers are delegated to the Governor-General to control the postal, telegraphic, and railway communication of the public, and to stop it, entirely or partially, as may seem best to his judgment.

8. Contributions and requisitions in the occupied district will be ordered by the Governor-General as he may deem fit, or at the application of the Intendant-General of the Army, and will be carried out according to his instructions. The extent of the money grant for supplies within the spheres of command of Governors-General, is to be determined by them after consultation with the Intendant-General.

9. On the 1st and 15th of each month reports are to be transmitted to me as to the progress and results of the administration, and with regard to any special events and measures which may have arisen.

(Signed) WILLIAM.  
(Countersigned) COUNT V. BISMARCK.  
COUNT V. ROON.

*Headquarters, Pont-à-Mousson,  
21st August, 1870.*

See also proclamations and notices issued by the Japanese military authorities in Manchuria. (The Russo-Japanese War. British Officers' Reports, Vol. II, p. 658.)

#### APPENDIX 21.

MILITARY CONVENTION between the Commander of the 1st French Army and the General-in-chief of the Army of the Swiss Confederation for the entry of the French troops into Switzerland; Signed at Les Verrières, 1st Feb., 1871.<sup>1</sup>

The following Convention has been made between General Clinchant, General-in-chief of the 1st French Army, and General Herzog, General-in-chief of the Army of Swiss Confederation:

Art. 1. The French Army demanding to pass into Swiss territory will on entering lay down its arms, equipment and ammunition.

Art. 2. These arms, equipment and ammunition will be restored to France after peace and after the definite settlement of the expenses occasioned to Switzerland by the sojourn of the French troops.

Art. 3. The artillery material and ammunition will be dealt with as above.

Art. 4. The horses, arms and effects of the officers will remain at their disposal.

Art. 5. Arrangements will be made later as regards the troop horses.

Art. 6. Supply and baggage wagons, after having deposited their contents, will immediately return to France with their drivers and horses.

<sup>1</sup> Translated from Martens's *Nouveau Recueil général de traités*. Vol. 19, p. 696.

Ch. XIV Art. 7. The Treasure Chest and post wagons will be handed over with the contents to the Swiss Confederation, which will account for them when the settlement of expenses is taking place.

Art. 8. The execution of these arrangements will take place in the presence of French and Swiss officers nominated for the purpose.

Art. 9. The Confederation reserves the designation of the place of internment for officers and soldiers.

Art. 10. It is the right of the Federal Council to indicate the detailed prescriptions necessary to complete the present Convention.

Done in triplicate at Les Verrières, 1st Feb., 1871.

(Signed) Clinchant.

(Signed) Herzog.

## APPENDIX 22.

### RELATIONS BETWEEN THE BRITISH MILITARY FORCES AND THE CIVIL POPULATION IN TIME OF WAR OR IMMINENT WAR.

#### (i) *In the home country.*

Relations between military forces and the civil population in the home country in time of war or imminent war are not the subject of any express laws. It may be stated as a general proposition that these relations do not differ from those obtaining in time of peace, but they may be profoundly modified either by the creation of a state of martial law, by operation of the Royal Prerogative expressed by Orders in Council and otherwise, or by the exercise of powers conferred upon the Government by emergency legislation. Apart from these possible and probable modifications, the ordinary law, including relevant sections of the Army Act, will govern all these relations. This definite position has its foundation in constitutional principles, and it is essential that officers should appreciate that they will always be liable to be called upon by the civil courts to justify their actions towards their fellow citizens.

#### (ii) *In enemy country.*

In all relations between the occupying military forces and the civil population in enemy country, the guiding principles should be:—

- (1) to watch against any attempt to endanger the objects of the occupation, or the safety, maintenance and requirements of the forces, and, subject to this,
- (2) to seek to institute and preserve a state of order, work and peace for the civil population.

Such results can only be attained by courteous intercourse without unnecessary friction, and by honest dealing, but, if occasions should arise, any infraction of essential obligations on the part of the population must be met with all necessary severity within the limits of the law which is applicable. Having regard to the close contact which must arise with the civil population, especially when occupation extends over a long period, it is essential that all ranks should be acquainted with these definite objects and that they should be instructed specifically as to their correct behaviour towards officials and civilians.

The above principles were those expressed in the Proclamation of the Inter-Allied Rhineland High Commission of the 10th January, 1920, and they were the foundation of the ordinances subsequently issued for the government of German occupied territory.

#### (iii) *In an allied country.*

Military forces, so long as they maintain that character, preserve law and order among themselves within the territory occupied by them with the consent of their ally, by the application of their own military law, and as provided in the Army Act (ss. 127 and 159). Beyond this territory, and in their relations with the local civil population, they are also amenable to the civil laws of the locality for offences committed by them, but in such cases instances have not been uncommon where the offender against a civil law has been surrendered to his military commander<sup>1</sup> for disposal. All relations between the forces and an allied civilian population must be characterized by cordiality and scrupulous dealings, by strict regard to local laws and customs, and by due respect to all constituted authorities.

<sup>1</sup> It has been the case that general or special arrangements and legislation have been made whereby the trial of military offenders against local civil laws has been definitely relegated to their own military courts; instances of this procedure being found in the Franco-American and Anglo-French Conventions, and in No. 45F of the Defence of the Realm Regulations made and issued during the Great War, 1914-18.

## PART II

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### THE ARMY ACT, RULES OF PROCEDURE, &c.

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#### ARMY AND AIR FORCE (ANNUAL) ACT, 1928

*Note.*—As pointed out in Chapter II, para. 33, the Army Act requires to be brought into force annually by another Act of Parliament, which until 1920 was entitled the Army (Annual) Act, and which since that date has been entitled the Army and Air Force (Annual) Act. The alteration of the title was consequent on the creation of the Royal Air Force, and the subsequent repeal by the Army and Air Force (Annual) Act, 1920, of those portions of the Air Force (Constitution) Act, 1917, which enacted that the Air Force Act should continue in force only so long as the Army Act continued in force, and that when any amendments were made to the Army Act, the corresponding amendments, with necessary modifications, should be made to the Air Force Act by Order in Council. The Army and Air Force (Annual) Act now provides for the continuance in force for a year of both the Army Act and the Air Force Act, and usually contains amendments to these Acts. The amendments to the Army Act made down to 1928 are incorporated in the text of the Army Act printed below. The preamble and first three sections of an Army and Air Force (Annual) Act are ordinarily in the form shown below, which is taken from the Act of 1928.

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*An Act to provide, during Twelve Months, for the Discipline and Regulation of the Army and Air Force.*

WHEREAS the raising or keeping of a standing army within the United Kingdom in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by His Majesty and this present Parliament that a body of land forces should be continued for the safety of the United Kingdom and the defence of the possessions of His Majesty's Crown, and that the whole number of such forces should consist of one hundred and fifty-three thousand five hundred, including those to be employed at the depots in the United Kingdom for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within His Majesty's Indian possessions :

And whereas under the Air Force (Constitution) Act, 1917, His Majesty is entitled to raise and maintain the air force, and it is judged necessary that the whole number of such force should

consist of thirty-two thousand five hundred, including those employed as aforesaid, but exclusive of the numbers serving as aforesaid, and the provisions of the Air Force Act are due to expire at the same dates as the provisions of the Army Act :

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in His Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid :

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of His Majesty's forces by sea :

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of this realm ; yet, nevertheless, it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law or to the Air Force Act, in their duty, that an exact discipline be observed and that persons belonging to the said forces who mutiny or stir up sedition, or desert His Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military or air force discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow :

And whereas the Army Act and the Air Force Act will expire in the year one thousand nine hundred and twenty-eight on the following days :—

- (a) In Great Britain and Ireland, the Channel Islands, and the Isle of Man, on the thirtieth day of April ; and
- (b) Elsewhere, whether within or without His Majesty's dominions, on the thirty-first day of July :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the Army and Air Force (Annual) Act, 1928.

Army Act and Air Force Act to be in force for specified times.

2.—(1) The Army Act and the Air Force Act shall be and remain in force during the periods hereinafter mentioned, and no longer, unless otherwise provided by Parliament (that is to say) :—

- (a) Within Great Britain and Ireland<sup>1</sup>, the Channel Islands, and the Isle of Man, from the thirtieth day of April, one thousand nine hundred and twenty-eight, to the thirtieth day of April, one thousand nine hundred and twenty-nine, both inclusive ; and
- (b) Elsewhere, whether within or without His Majesty's dominions, from the thirty-first day of July, one thousand nine

<sup>1</sup> In the Army and Air Force (Annual) Act, the term "Ireland" includes the Irish Free State.



hundred and twenty-eight, to the thirty-first day of July, one thousand nine hundred and twenty-nine, both inclusive.

(2) The Army Act and the Air Force Act, while in force, shall apply to persons subject to military law or to the Air Force Act, as the case may be, whether within or without His Majesty's dominions.

(3) A person subject to military law or to the Air Force Act shall not be exempted from the provisions of the Army Act or Air Force Act by reason only that the number of the forces for the time being in the service of His Majesty, exclusive of the marine forces, is either greater or less than the numbers hereinbefore mentioned.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Act or the Air Force Act the prices specified in the First Schedule to this Act. Prices in respect of billeting.

[Here follow the amendments of the Army and Air Force Acts made in 1928.]

#### FIRST SCHEDULE.

Accommodation to be provided	Maximum Price
Lodging and attendance for soldier where meals furnished	Tenpence per night for the first soldier and eightpence per night for each additional soldier.
Breakfast as specified in Part I. of the Second Schedule to the Army Act	Sevenpence each.
Dinner as so specified ... ..	Tenpence.
Supper as so specified ... ..	Fourpence.
Where no meals furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat	Tenpence per night for the first soldier and eightpence per night for each additional soldier.
Stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse	Two shillings and fivepence per day.
Stable room without forage ... ..	Sixpence per day.
Lodging and attendance for officer ... ..	Three shillings per night.

*Note.*—An officer shall pay for his food.

In the application of this Schedule to the Air Force references to the Air Force Act and airman shall be substituted for references to the Army Act and soldier.

## THE ARMY ACT

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**SCHEDULES.**

## THE ARMY ACT.

[44 & 45 Vict. c. 58.]

**ss. 1-3.** *An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same\**

### Preliminary.

Short title of Act.

Mode of bringing Act into force.

1. This Act may be cited for all purposes as the Army Act.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same.

### NOTE.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see Ch. II, paras. 16 and 33.

Division of Act.

3. This Act is divided into five parts, relating to the following subject-matters; that is to say,

Part I —Discipline:

Part II —Enlistment:

Part III —Billeting and impressment of carriages:

Part IV —General provisions:

Part V —Application of military law, saving provisions, and definitions.

## PART I.

### DISCIPLINE.

#### CRIMES AND PUNISHMENTS.

#### Part I.

##### *Offences in respect of Military Service.*

**s. 4.**  
Offences in relation to the enemy punishable with death.

4. Every person subject to military law<sup>1</sup> who commits any of the following offences; that is to say,

(1) Shamefully abandons<sup>2</sup> or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

\* The Act is printed with the amendments introduced by the Annual Acts down to and inclusive of the Act of 1928, in accordance with the directions of 48 Vict. c. 8, s. 8 (2), and also incorporates the amendments made by the I.R.F. Act, 1907, the Air Force (Constitution) Act, 1917, and the Territorial Army and Militia Act, 1921.

- (2) Shamefully casts away<sup>3</sup> his arms, ammunition, or tools in the presence of the enemy; or
- (3) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice<sup>4</sup> sends a flag of truce to the enemy; or
- (4) Assists the enemy with arms, ammunition, or supplies,<sup>5</sup> or knowingly<sup>6</sup> harbours or protects an enemy not being a prisoner; or
- (5) Having been made a prisoner of war, voluntarily<sup>7</sup> serves with or voluntarily aids the enemy; or
- (6) Knowingly<sup>8</sup> does when on active service<sup>9</sup> any act calculated to imperil the success of His Majesty's forces or any part thereof; or
- (7) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,<sup>9</sup>

shall, on conviction by court-martial, be liable to suffer death, or such less punishment as is in this Act mentioned.

#### NOTE.

1. *Subject to military law*.—For an enumeration of persons so subject see Part V, and introductory observations thereto.

2. *Shamefully abandons, &c.* This offence can only be committed by the person in charge of the garrison, post, &c., and not by the subordinate under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and munitions, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore an offence under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (1)(b) or s. 6 (2) (a), where it has reference to the position of an individual.

Particulars of a charge under the first part of this paragraph must detail some circumstances which make the abandonment in a military sense shameful.

3. *Shamefully casts away*. The particulars of the charge must show the circumstances which make the act in a military sense shameful (see e.g. specimen charge-sheet No. 1, p. 715). The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

4. *Treacherously or through cowardice*. The particulars of the charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under s. 5 (4).

5. *Supplies*. This would include the taking any steps to restore a supply of water cut off by our forces.

6. *Knowingly*. Evidence should if possible be given that the accused knew the person harboured or protected to be an enemy; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. A similar observation applies to "knowingly" in (6).

7. *Voluntarily*. Proof of "serving with" or "aiding" without any visible sign of compulsion appears to be sufficient to constitute a *prima facie* case justifying a conviction if no rebutting evidence is given by the defence.

8. For definition of *active service*, see s. 189.

9. Paragraph (7) is confined to acts, neglect, or omissions which show cowardice, and the particulars of the charge must be framed accordingly (see e.g. specimen charge-sheet No. 2, p. 715). It must be shown that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehaviour of any kind not evidencing cowardice cannot be charged under this paragraph.

**Part I.** 5. Every person subject to military law who on active service commits any of the following offences; that is to say,

ss. 5, 6.

Offences in relation to the enemy not punishable with death.

- (1) Without orders<sup>1</sup> from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or
- (2) Without orders<sup>1</sup> from his superior officer wilfully destroys or damages any property; or
- (3) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same; or
- (4) Without due authority<sup>1</sup> either holds correspondence with, or gives intelligence to<sup>2</sup>, or sends a flag of truce to the enemy; or
- (5) By word of mouth, or in writing, or by signals, or otherwise spreads reports calculated to create unnecessary alarm or despondency<sup>3</sup>; or
- (6) In action, or previously to going into action, uses words calculated to create alarm or despondency<sup>3</sup>,

shall, on conviction by court-martial, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

#### NOTE.

1. *Without orders; without due authority.* As soon as *prima facie* evidence negating "orders" or "authority" is given, a court may convict unless the accused proves that he had orders or authority.

2. *Gives intelligence to.* A man must be taken to intend the natural consequences of his actions, and the paragraph appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re-publication (*e.g.*, by relatives or newspapers) of letters, sketches, photographs, &c. Everyone connected with the forces should recognise the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, &c. As to "injurious disclosures" generally, see s. 36, and the Official Secrets Acts 1911 and 1920 as set out on p. 895 *et seq.* See also K.R. 521, 522.

3. Para (5). The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under para. (6). It is not necessary to aver or prove that the reports were false, indeed the truth may increase the offence; nor is it necessary to show that any effect was actually produced by the reports spread or words used; it could, however, seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under para. (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

Offences punishable more severely on active service than at other times.

6.—(1) Every person subject to military law who commits any of the following offences<sup>1</sup>; that is to say,

[*Para. (a) transferred to subs. (2) by A. and A.F. (A) Act, 1928.*]

(b) Without orders from his superior officer, leaves his guard, picket, patrol, or post<sup>2</sup>; or

[*Paras. (c), (d) and (g) transferred to subs. (2) by A. and A.F. (A) Act, 1928.*]

[*Paras. (e) and (f) transferred to subs. (2) by A. and A.F. (A) Act, 1925. Subs. (2) renumbered (3) by A. and A.F. (A) Act, 1928.*]

Part I.  
—  
a. 6.

- (k) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever<sup>3</sup>, intentionally<sup>4</sup> occasions false alarms in action, on the march, in the field, or elsewhere<sup>5</sup>; or
- (i) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive it; or treacherously gives a parole, watchword, or countersign different from what he received<sup>6</sup>; or

[Para. (j) transferred to subs. (2) by A. and A.F. (A) Act, 1925.  
Subs. (2) renumbered (3) by A. and A.F. (A) Act, 1928.]

- (k) Being a soldier acting as sentinel, leaves his post<sup>7</sup> before he is regularly relieved,

[Para. (k) (i) transferred to subs. (2) by A. and A.F. (A) Act, 1928.]

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service be liable if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2) Every person subject to military law who commits any of the following offences; that is to say,

- (a) Leaves his commanding officer to go in search of plunder<sup>8</sup>; or
- (b) Forces a safeguard<sup>9</sup>; or
- (c) Forces or strikes a sentinel; or
- (d) Breaks into any house or other place<sup>10</sup> in search of plunder<sup>11</sup>; or
- (e) Being a soldier acting as sentinel sleeps or is drunk on his post<sup>7</sup>,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(3) Every person subject to military law who commits any of the following offences; that is to say,

- (a) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere<sup>12</sup>; or
- (b) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good

## Part I:

s. 6.

- and sufficient cause, gives a parole, watchword, or countersign different from what he received<sup>13</sup>; or
- (c) Impedes the provost marshal<sup>14</sup> or any assistant provost marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal, assistant provost marshal, or any such officer, non-commissioned officer, or other person; or
  - (d) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving<sup>15</sup>; or
  - (e) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders<sup>16</sup> issued in that respect,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

1. The punishment for the offences here mentioned varies very widely according as the offences are committed on active service or not on active service; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of *active service*, see s. 189.

2. *Post*. As used with respect to an individual this word refers to the position or place in which it may be the duty of an officer or soldier to be, especially when under arms; and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or N.C.O. posting him; or to any limits specially pointed out as his beat. In determining what, in any particular case, is a post, the court will use their military knowledge. See note 7 below.

The place in which the person was posted is material and should be stated in the charge.

3. The particulars of the charge must set out exactly the signal made or the words used. If means other than words are used they must be specified briefly in the particulars of the charge.

4. *Intentionally*. See note 6 to s. 4 and Ch. VII, para. 23.

5. Where reliance is placed on the word "elsewhere," the place should be specified in the statement of the offence.

6. Although treachery must be averred in a charge under this paragraph, and want of good and sufficient cause in a charge under suba. (3) (b), the particulars of the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from that which he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The particulars of the charge must aver that the person was not entitled to receive the watchword.

*Watchword* will include any authorised pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

7. *Post*. See note 2 above. The fact of a sentry not being regularly posted is immaterial if he is charged with an offence committed while on his post. When, however, he leaves his post and commits an offence, it is always necessary to prove that he had been regularly posted. A soldier is liable, if, being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a N.C.O. A sentry found drunk even a short distance from his post

should be charged with leaving his post; he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness, the particulars of the charge showing that he was on duty at the time. As to "stablemen," see K.R., 623.

8. This paragraph, having regard to the special military significance of the term "plunder," is applicable only to offences committed on active service. For meaning of "commanding officer" see Ch. XI, para. 6.

9. *Safeguard*. A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house, cellar, or other property under his especial care as to force the whole party. A man posted solely to control traffic is not a "safeguard" for the purposes of this provision.

10. The "other place" should be specified in the charge.

11. *Plunder*. See above note 8.

12. See notes 3 and 5 above. This paragraph applies only to false alarms among the troops occasioned negligently.

13. See note 6 above. This paragraph only differs from subs. (1) (i) in the omission of the treacherous character of the offence.

14. *Provost marshal*. As to appointment and duties of provost marshals see s. 74, and Ch. IV, para. 40. As s. 74 only provides for the appointments of provost marshals and assistant provost marshals abroad, a person should not be charged under this paragraph when the offence is committed in the United Kingdom; in such cases the charge should be laid under s. 8 or s. 9 (if applicable), or under s. 40. The court may exercise their military knowledge as to whether a person was a provost marshal, assistant provost marshal or a person legally exercising authority under or on behalf of the provost marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost marshal or assistant provost marshal, or was not legally exercising the above-mentioned authority.

15. See Ch. XIV, para. 413 (footnote). It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence which in other circumstances would be trivial, may require severe punishment, as for instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army. As an offence under the paragraph will really be a civil offence when not committed on active service, a person should not be charged under this paragraph when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case (see Ch. VII, para. 3). On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

16. The particulars of the charge must show how the act charged was irregular and contrary to orders.

### *Mutiny and Insubordination.*

7. Every person subject to military law who commits any of the following offences; that is to say, Mutiny and  
sedition.

- (1) Causes or conspires with any other persons to cause any mutiny or sedition<sup>1</sup> in any of His Majesty's military, naval, or air forces; or
- (2) Endeavours to seduce any person in any of His Majesty's military, naval, or air forces, from allegiance to His Majesty, or to persuade any person in any of His Majesty's military, naval, or air forces, to join in any mutiny or sedition<sup>2</sup>; or
- (3) Joins in, or being present<sup>3</sup> does not use his utmost endeavours<sup>4</sup> to suppress, any mutiny<sup>5</sup> or sedition in any forces belonging to any of His Majesty's military, naval, or air forces; or

**Part I.** (4) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to any of His Majesty's military, naval, or air forces, does not without delay inform his commanding officer<sup>6</sup> of the same,

ss. 7, 8.

shall, on conviction by court-martial, be liable to suffer death, or such less punishment as is in this Act mentioned.

#### NOTE.

1. See as to these offences, Ch. III, paras. 5-7. A man might be tried under this paragraph for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

2. Civilians who endeavour to seduce any person serving in His Majesty's forces by sea or land from allegiance to His Majesty, or to incite any such person to commit any traitorous or mutinous practice, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will. IV and 1 Vict. c. 91.

3. Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not. This paragraph provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting, where a mutiny is begun or contrived, will be guilty of an offence under this paragraph although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under para. (1) and this paragraph.

4. This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

5. Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.

6. This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by R.P. 129; see Ch. XI, para. 6. A private soldier, for example, would properly inform his serjeant, and information so given would be held to be given to his commanding officer within the meaning of the section.

Striking or threatening superior officer.

8.—(1) Every person subject to military law who commits any of the following offences<sup>1</sup>; that is to say,

Strikes or uses or offers any violence<sup>2</sup> to his superior officer,<sup>3</sup> being in the execution of his office,<sup>4</sup>

shall, on conviction by court-martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

(2) Every person subject to military law who commits any of the following offences<sup>1</sup>; that is to say,

Strikes or uses or offers any violence<sup>2</sup> to his superior officer<sup>3</sup> or uses threatening or insubordinate language<sup>5</sup> to his superior officer,

shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. See s. 56 (4A), (4B), (4C), under which an accused charged with striking may be found guilty of using or offering violence; if charged with using



violence, may be found guilty of offering violence; and if charged with using threatening language, may be found guilty of using insubordinate language.

2. *Offers any violence.* These words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his equipment on parade, or throwing away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior, behind the bars of a cell or at such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile would be "using" or "offering" violence according to the results, and pointing a loaded firearm at a superior would be "offering" violence. Pointing an unloaded firearm should be charged under s. 40, unless threatening or insubordinate language is used.

If the violence be used in self-defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted.

3. *Superior officer.* This expression in this section means not only a superior in rank as defined by s. 190 (7), but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one private soldier can never be the "superior officer" of another. The court should be satisfied, before conviction, that the accused knew the person with respect to whom the offence was committed to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being his superior officer. Where the accused is charged with an offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused.

A military policeman is not, as such, the superior officer of a private soldier. When a soldier, who is arrested for drunkenness, strikes a N.C.O. (being his superior officer) of the military police and is brought to trial, the convening officer will consider according to the particular circumstances, whether it is necessary or expedient to charge the soldier with the graver offence of striking his superior officer, or whether the case would be met by charging the accused with one of the less serious offences specified in s. 10 (2) or (3).

See generally as to offences against superiors, K.R., 619.

4. *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. It may be taken in general that striking or using violence to any superior officer by a soldier over whom it is at the time the duty of that superior officer to maintain discipline, would be striking or using violence to him in the execution of his office.

5. *Threatening or insubordinate language.* Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bona fide* for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

Expressions used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section, but the use of threatening

**Part I.** or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of "using insubordinate language" under this section.  
**ss. 8, 9.**

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

As to the use of coarse and abusive language by a man when drunk, see Ch. III, paras. 47, 48; and for general observations on insubordinate language, see Ch. V., para. 71.

Improper language which does not amount to insubordinate language, or cannot be proved to have been used to a superior officer, must be charged under s. 40.

Disobedience  
to superior  
officer.

**9.—(1)** Every person subject to military law who commits the following offence; that is to say,

Disobeys<sup>1</sup> in such manner<sup>2</sup> as to show a wilful defiance of authority any lawful command<sup>3</sup> given personally<sup>4</sup> by his superior officer<sup>5</sup> in the execution of his office,<sup>6</sup> whether the same is given orally, or in writing, or by signal, or otherwise,

shall, on conviction by court-martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

**(2)** Every person subject to military law who commits the following offence; that is to say,

Disobeys<sup>1</sup> any lawful command<sup>7</sup> given by his superior officer,<sup>8</sup> shall, on conviction by court-martial, if he commits such offence on active service, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

#### NOTE.

1. The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it" does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). See Ch. III, para. 11.

An omission arising from misapprehension or forgetfulness is not an offence under this section. Nor is the act of a soldier who declines to sign his accounts upon the ground that they are incorrect. Nor is failure to obey a command where obedience would be physically impossible.

Religious scruples, however *bona fide*, are no excuse for neglect or refusal to obey orders.

2. *Disobeys in such manner... any lawful command.* See Ch. III, paras. 10-14. The particulars of the charge must specify the command, and state that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority. The particulars should also show how the superior officer was in the execution of his office (see note 4 to s. 8, and specimen charge-sheets Nos. 19 and 22, pp. 718-9), but the court may make use of their military knowledge for determining whether the superior officer was in the execution of his office, and whether he was a superior officer who by virtue of his office was authorised to give such a command.

3. *Lawful command.* The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus, a command given by an officer to his soldier servant to perform some domestic office not relating to military duty is not a

command within the meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of a N.C.O. does not disobey a lawful command.

Part I.

With regard to the performance of duties while under arrest, see K.R. 540.

ss. 9, 10.

A convalescent patient may lawfully be ordered to assist the hospital staff by doing such fatigue work as he may be fit for, or for the good of his health to occupy himself with some prescribed form of handiwork.

A soldier may lawfully be ordered to have his hair cut.

A civilian cannot give a "lawful command" to a soldier employed under him, e.g., in a pay office; but it may well be the soldier's duty as such to do the act indicated, apart from any order, and, if so, he may be punished for not doing so under s. 40.

As to orders to undergo medical treatment, see s. 18 (3) and note.

As to disobedience of general or garrison orders, see s. 11.

It was held in *Warden v. Bailey* (1815) 4 M. & S. 400, that insubordinate discussion (with other N.C.Os.) of an illegal order was a breach of good order and military discipline.

4. A command does not cease to be given "personally" because it is given to a number of men at one time.

5. For the meaning of the expression "superior officer," see note 3 to s. 8.

6. *In the execution of his office.* See note 2 above, and note 4 to s. 8.

7. *Disobeying lawful command.* See note 3 above.

To establish an offence under this sub-section, it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom, according to the usages of the service or otherwise, the accused might reasonably suppose to have been duly authorised to notify to him the command of his superior. But it must be a specific command to an individual, and must be given as being the command of a superior who by virtue of his office or otherwise was authorised to give such a command.

An officer refusing to go into hospital when ordered could be charged under this sub-section.

10. Every person subject to military law who commits any Insubordination.  
of the following offences; that is to say,

- (1) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer<sup>1</sup>; or
- (2) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer<sup>2</sup>; or
- (3) Resists an escort whose duty it is to apprehend him or to have him in charge<sup>3</sup>; or
- (4) Being a soldier, breaks out of barracks, camp, or quarters,<sup>4</sup> shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. A person may be charged under this paragraph whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged under s. 8 or s. 9. Only officers should be charged under this paragraph.

2. It will be observed that a charge may be laid under this paragraph for assaulting a civilian policeman, if the person committing the assault is subject to military law, and has been placed in the policeman's custody by an officer, warrant officer, or N.C.O.

3. The resistance may be passive. A man lying down and refusing to move, if physically able to move, "resists." Threats and a threatening attitude which in fact deter an escort from arresting a man may amount to

**Part I.** "resisting" the escort. The particulars of the charge should specify the nature of the resistance; (see specimen charge-sheet No. 26, p. 719). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge. Breaking away from an escort is not by itself an offence under this section, but may be charged under s. 22.

ss. 10, 11.

**4. Breaks out of barracks, &c.** This offence consists in a soldier quitting barracks, &c., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a C.O. in determining whether to deal with it as a mere breach of discipline under this paragraph, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, &c., was without permission, or otherwise unlawful.

If the charge be for breaking out of barracks, it must be proved that the accused left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of a man quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.

A soldier who breaks out of barracks, camp or quarters, and remains absent for some time should, if brought to trial by court-martial, be charged only with desertion or absence without leave (s. 12 or s. 15); and if he was a defaulter at the time, the fact should be stated in the particulars of the charge. See K.R. 649.

Neglect to  
obey gar-  
rison or other  
orders.

**11. Every person subject to military law who commits the following offence; that is to say,**

**neglects to obey any general or garrison or other orders,**  
shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include His Majesty's regulations and orders for the army or any similar order in the nature of a regulation published for the general information and guidance of the army.

#### NOTE.

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command must be dealt with under s. 8, and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under s. 40.

Ignorance of the order is no excuse if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. A copy of the order contravened must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced; a written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted (see K.R. 74 and 1602) or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a K.R. may be punished under s. 40, but if a K.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished under this section.

The offence of concealment of venereal disease by a soldier is to be dealt with under this section. K.R. 529.

*Desertion, Fraudulent Enlistment, and Absence without Leave.*

s. 12.

12.—(1) Every person subject to military law who commits *Desertion.* any of the following offences; that is to say,

- (a) Deserts<sup>1</sup> or attempts to desert<sup>2</sup> His Majesty's service; or
- (b) Persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert from His Majesty's service,

shall, on conviction by court-martial—

if he committed such offence when on active service<sup>3</sup> or under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment or such less punishment as is in this Act mentioned; and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.<sup>4</sup>

(2) Where an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.<sup>4</sup>

(3) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.<sup>4</sup>

## NOTE:

1. See Ch. III, paras. 17-26; K.R., 581-597.

Upon a charge of desertion the particulars should state, and the prosecution should prove, both the date when the absence began, and the date when it ended (by return, surrender, apprehension, or re-enlistment). It is not sufficient to allege and prove absence "on or about" a certain date, or "from some date subsequent to....."

To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for service abroad or service in aid of the civil power. If the basis of the charge is an intent to avoid embarkation, or some other special duty or service, the particulars should contain an allegation to this effect.

In order to establish in evidence that a soldier has deserted or attempted to desert "when under orders for embarkation," the original or a certified true copy of orders detailing the accused for embarkation must be produced by a witness on oath, and evidence must be given that the orders were duly posted or brought to the notice of the accused, or that he was otherwise in a position

**Part 1.** to be acquainted with their contents (see K.R. 1099, 1100). This would not, however, exclude proof of verbal orders for embarkation given by a C.O. in an emergency.

**s. 12.** Personal warning and acknowledgment of such warning in accordance with K.R. 1099 should also be proved whenever possible.

If a man warned for a draft overstays his "draft leave," even though he does not know the exact date fixed for sailing, it will be open to the court, if the circumstances warrant it, to infer that he intended to escape the important service on which he was ordered and to convict him of desertion.

A person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of desertion, or of being absent without leave (s. 56 (3) (4); see also in connection with findings of absence without leave, note 1 to s. 161).

As to forfeiture of prior service on conviction for desertion or fraudulent enlistment, see ss. 79 (2), 84 (2), and notes; as to forfeiture of pay on conviction for desertion, see s. 138 (1) and P.W. 879 (a); as to liability to general service or transfer on conviction or confession of desertion or fraudulent enlistment, see s. 83 (7); as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter see s. 83 (8); as to descriptive reports of deserters, escorts, and generally, see K.R., 581-597; and as to inquiry into absence and confession of desertion or fraudulent enlistment, see ss. 72, 73, and R.P. 125.

Any person who falsely represents himself to any authority to be a deserter may be sentenced by a civil court of summary jurisdiction to imprisonment, with or without hard labour, for any period not exceeding three months, (s. 152); see also as to punishment by a like court of persons inducing officers or soldiers to desert, s. 153; and as to the apprehension of deserters, s. 154.

As to a false statement by a soldier to his C.O. that he has been guilty of desertion or fraudulent enlistment, see s. 27 (3).

As to desertion by men of the Territorial Army, see T.R.F. Act, s. 20.

When under K.R. 616 (b) a superior officer directs the case of an offender against whom a charge of desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave.

2. *Attempt to desert.* To establish an attempt to desert, some act which, if completed, would constitute desertion, as above described, must be proved. A mere intention to desert does not amount to an attempt to desert.

3. *On active service.* See note 1 to s. 6.

4. If the accused is put on his trial for two offences of desertion, or for fraudulent enlistment and desertion, and it is desired that the higher punishment allowed for a second offence should be awarded, the charges must be on separate charge-sheets, and the trials distinct, though they may be held before the same court. To enable the punishment of penal servitude to be awarded, the court must, of course, be a general court-martial, or, if on active service, a field general court-martial. For the general principles to be adopted in connection with the placing of charges in separate charge-sheets, see note 1 to R.P. 62.

The case is similar where the charge is for fraudulent enlistment under s. 13; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment (s. 13 (2) (3)).

For example, if a soldier deserted on the 1st October, 1920, and was apprehended, convicted, and punished, and after undergoing his punishment returns to the ranks, and on the 10th March, 1923, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment. If, however, a soldier who deserted on the 5th January, 1923, and is not apprehended, abandons his intention of permanently quitting the service, and fraudulently enlists on the 15th July, 1923, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment," and the exception in s. 13 (3) applies.

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

**13.—(1) Every person subject to military law who commits any of the following offences; that is to say,** **Part I.**

- s. 13.**  
**Fraudulent enlistment.**
- (a) When belonging to either the regular forces, or the territorial army when embodied,<sup>1</sup> without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist or enrol, enlists<sup>2</sup> or enrolls himself in His Majesty's regular forces<sup>3</sup> or in any force raised in India or a colony; or
- (b) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the territorial army or in any of the reserve forces, or in the Air Force, or enters the Royal Navy,<sup>4</sup>

shall be deemed to have been guilty of fraudulent enlistment,<sup>5</sup> and shall, on conviction by court-martial, be liable—

- (i) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and
- (ii) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2) Where an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further it shall be lawful on conviction of a person for two or more such offences to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.<sup>6</sup>

(3) Where an offender is convicted of the offence of fraudulent enlistment, then for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting or attempting to desert His Majesty's service may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not upon his conviction for that fraudulent enlistment be reckoned as a previous offence of deserting or attempting to desert.<sup>6</sup>

#### NOTE.

1. The particulars of the charge must specify the force to which the accused belonged at the time of his enlistment. A member of the Territorial Army enlisting when the Territorial Army is not embodied, cannot be charged under this section, though he may be charged under s. 33 for making a false answer.

2. A copy or duplicate of the attestation paper is proof of enlistment (s. 163 (1) (a)).

3. This sub-section covers the case of a soldier of the Royal Marines who enlists in the regular forces while a deserter or an absentee from one of His Majesty's ships. See proviso (a) to s. 179 (15).

4. Subs. (1) (b) covers the case of a soldier who enters the Royal Navy or enlists in the Royal Air Force, but subs. (1) (a) does not cover that of a sailor

Part I. or airman who enlists in the Army. Such cases can be dealt with under s. 33.

5. For forfeiture of service on conviction for fraudulent enlistment, see ss. 79, 84 (2) and 161.

ss. 13-15. Where a soldier is charged with fraudulent enlistment, by reason of which he has obtained a free kit of necessaries, the receipt of that free kit must be mentioned in the particulars of the charge and (unless the accused pleads guilty) proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit of necessaries, but the charge of fraudulently obtaining a free kit of necessaries cannot by itself be maintained; see R.P. 13 (F), K.R., 624, and R.P., App. I, note as to use of Forms of Charges (23), p. 701. The issue of a free kit of necessaries may be proved by a copy of a record thereof in the regimental books (s. 163 (1), (g) and (h)).

6. As to conviction for two offences, and the punishment for the second offence, see note 4 to s. 12.

For references to further provisions of the Act as to fraudulent enlistment and desertion, see note 1 to s. 12. See also Ch. III, paras. 26 and 27.

Assistance of or connivance at desertions 14. Every person subject to military law<sup>1</sup> who commits any of the following offences; that is to say,

- (1) Assists<sup>2</sup> any per on subject to military law to desert His Majesty's service; or
- (2) Being cognizant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice<sup>3</sup> to his commanding officer,<sup>4</sup> or take any steps in his power<sup>5</sup> to cause the deserter or intending deserter to be apprehended,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. As to similar offences by civilians, see s. 153.

2. It must be proved that the accused knew that the assistance given by him was for the purpose of the desertion.

3. *Does not forthwith give notice.* The time at which the accused became cognizant of the desertion, and, if he gave notice to his C.O., the time at which he gave notice, are material, and should be specified in the charge.

4. *Commanding officer.* This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not. See Ch. VI, para. 10, and note 6 to s. 7.

5. If the charge is under the latter part of (2), the particulars must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

Absence from duty without leave. 15. Every person subject to military law who commits any of the following offences; that is to say,

- (1) Absents himself<sup>1</sup> without leave<sup>2</sup>; or
- (2) Fails to appear<sup>3</sup> at the place of parade<sup>3</sup> or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity<sup>3</sup> quits the ranks; or
- (3) Being a soldier, when in camp or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited by any general garrison or other order,<sup>4</sup> without a pass or written leave from his commanding officer<sup>5</sup>; or
- (4) Being a soldier without leave from his commanding officer,<sup>5</sup> or without due cause,<sup>2</sup> absents himself from any school when duly ordered to attend there,



shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Part I.  
—  
s. 15.

## NOTE.

1. *Absents himself.* See Ch. III, paras. 17-24; as to the apprehension of absentees without leave, see s. 154; see also note 3 to s. 22 with regard to a soldier who escapes from arrest and then absents himself without leave. For forfeiture of pay on conviction for absence without leave, see ss. 137 and 138, and the Pay Warrant.

A soldier tried for desertion or attempted desertion may, under s. 56, be found guilty of absence without leave; but if only charged with absence without leave he cannot be convicted of desertion or attempted desertion. When a soldier has been absent without leave for 21 clear days a court of inquiry will be assembled (s. 72). See also K.R. 581 *et seq.*; 742; R.P. 125.

The absence must be from the place where it is his duty to be, and where he ought to be found if wanted. Usually it must be absence from his barrack, camp or station, but if his duty is to be in one part of the barrack, and he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave.

The particulars should state the date when the absence began, and the date when it ended (by return or arrest). If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must also be stated in the particulars.

Involuntary absence due, for example, to illness or arrest by the civil power, is not ordinarily an offence under this section; but inability to return owing to drunkenness (which is an offence against the Act) is no excuse. Where the absence was originally voluntary and subsequently becomes involuntary, the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary. Conversely, absence originally involuntary, may become an offence under this paragraph if the person charged fails to return to duty at the earliest possible moment.

As soon as an absentee is taken into custody (either civil custody, or open or close arrest), whether on surrender or on apprehension, his absence ceases to be voluntary; K.R. 567. If, however, he is merely ordered (*e.g.*, by an assistant provost marshal or railway transport officer) to rejoin his unit at once, his absence without leave continues until he so rejoins.

In cases where a soldier on leave has lost his return ticket or has not sufficient funds to purchase a railway ticket, and is consequently unable to rejoin his unit before the expiration of his leave, the delay in rejoining may be dealt with, subject to the discretion of the officer disposing of the case, as absence without leave, notwithstanding that the soldier may have reported to the local military or police authorities.

If an officer is told that orders as to reporting will be sent to him at home, it is his duty to ask for orders should none reach him within a reasonable time. Otherwise he may be treated as absent without leave after the date when any honest and reasonable man would have recognised that such orders would normally have arrived.

Leave of absence is not effective until it is notified to the applicant. A person who goes away in expectation of his application being granted, but without waiting to know the result of it, may be convicted of absence without leave, although in fact the leave asked for has been granted.

A member of the Territorial Army, who, while out for annual training in camp, absents himself without leave, would be liable under this section. See also T.R.F. Act, s. 20.

2. In charges under this section the court may look to the accused to give evidence of his "leave," "urgent necessity" or "due cause," as soon as the prosecution have given evidence establishing his absence, failure to appear, &c., and raising the inference that he had no leave, &c.

3. The particular parade should be specified, so that the accused may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade. It must be proved that the accused had actual or constructive notice of the time and place appointed by the C.O. But the place for the parade need not have been specifically mentioned if it can be proved that it was well understood and known to the accused. Such a charge can seldom be preferred with safety unless orders stating both the time and place of parade can be produced; and if any difficulty arise the

**Part I.** charge should be laid under para. (1), if the evidence will support the charge.

A soldier absent without leave is not also liable to trial for failing to attend parades, &c., during the period of his absence, but he may be tried on alternative charges for both offences. A soldier absent from parade owing to drunkenness should be charged under s. 19 and not under this paragraph.

4. Ignorance of an order, of which he ought to be aware, although it may mitigate the punishment, does not exculpate the accused. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation. (See also note to s. 11.)

5. Any officer having command over the accused and authority to grant leave will be a commanding officer within the meaning of paragraphs (3) and (4). This matter can therefore be determined by the military knowledge of the court.

### *Disgraceful Conduct.*

Scandalous  
conduct of  
officer.

16. Every officer who, being subject to military law, commits the following offence; that is to say,

behaves in a scandalous<sup>1</sup> manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered.<sup>2</sup>

#### NOTE.

1. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer deserving of being cashiered, and therefore scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service should not be made the ground of a charge against an officer, but may well form the subject of reproof and advice on the part of his C.O. or some other superior officer.

The addition of an alternative charge under s. 40 will meet a case where the evidence, as ultimately given before the court, may justify a more lenient view of the case.

As a rule a charge should not be preferred under this section in the case of an act or neglect which amounts to any one of the specific offences dealt with in ss. 4 to 15 and 17 to 39. Thus, in cases of drunkenness, whether on duty or not on duty, the charge should be preferred under s. 19, and in cases of disgraceful conduct, as provided for in s. 18.

2. It is important to note that in case of a conviction under this section, cashiering is the only punishment which can be awarded by the court; (see, however, s. 57 with regard to commutation or remission of such a sentence).

Fraud by  
persons in  
charge of  
money or  
goods.

17. Every person subject to military law who commits any of the following offences; that is to say,

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods,

shall, on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

#### NOTE.

At home stations, in all cases of fraud—but not of simple theft—the charge and summary of evidence must be submitted to the Judge-Advocate-General before the trial is ordered. (K.R. 630.)

The meaning of "theft," "fraudulent misapplication" and "embezzlement" is dealt with in Ch. III, paras. 30-35; see also Ch. VII, paras. 50-55. See specimen charges Nos. 43-47, pp. 722-3. Under s. 56, a person charged

with theft may be convicted of embezzlement or fraudulent misapplication, and if charged with embezzlement he may be convicted of theft or of fraudulent misapplication. Part I.

This section does not apply to ordinary thefts or to such thefts as are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge. ss. 17, 18.

The particulars of the charge must show in detail that the accused was charged with or concerned in the care or distribution of the money or goods alleged to have been stolen, fraudulently misapplied or embezzled (see specimen charge-sheet No. 43, p. 722); but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A sentry posted over a place containing public property would not be "charged with" the care of the property within the meaning of this section.

The expression "charged with" means officially charged with, that is to say, in virtue of the public office which the accused formally holds. A corporal entrusted by a sergeant for his own convenience with public money should not be charged under this section, although he might be convicted under s. 18.

If the charge is for fraudulent misapplication or embezzlement, it should allege that the property was improperly applied for the use of the accused himself or some other person (as the case may be), and not for a public purpose. If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied.

Each instance of theft, embezzlement or fraudulent misapplication should be in a separate charge.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case, for example, of a N.C.O.'s accounts getting into confusion through the neglect or carelessness of superiors.

As to holding a court of inquiry on discovery of loss of stores, &c., see K.R. 737, 738; and as to restitution of stolen, &c., property, see s. 75.

A Bank note or Treasury note is, but a postal order is not, "money" for the purposes of this section.

Property of the Navy, Army and Air Force Institutes is not "public" or "regimental" property for the purposes of this section. This property is, however, specifically dealt with in s. 18 (4).

It is not clear at what moment rations issued to a soldier cease to be "public" property. *R. v. Immer* (1917) 13 Cr. App. Rep. 22; *Mogan v. Caldwell* (1919) 35 T.L.R., 381: but if he improperly disposes of them, he can be charged under s. 40, and a civilian recipient under s. 156, without laying the property in anyone.

A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. (See s. 190 (18), and P.W., 965.)

See also notes to s. 18 (4).

**18.** Every person subject to military law<sup>1</sup> who commits any of the following offences; that is to say, Disgraceful conduct.

- (1) Malingers,<sup>2</sup> or feigns<sup>3</sup> or produces disease or infirmity<sup>4</sup>; or
- (2) Wilfully maims or injures himself or any other person subject to military law, whether at the instance of that person or not, with intent thereby to render himself or that person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service<sup>4</sup>; or
- (3) Is wilfully guilty of any misconduct,<sup>5</sup> or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces<sup>6</sup> or aggravates disease or infirmity, or delays its cure<sup>4</sup>; or

- Part. I (4) Steals,<sup>6</sup> embezzles or fraudulently misapplies,<sup>7</sup> or receives, knowing them to be stolen or embezzled, any money or goods the property of a person subject to military law,<sup>8</sup> or any money or goods belonging to any regimental mess<sup>9</sup> or band, or to any regimental institution<sup>9</sup> or to the Navy, Army, and Air Force Institutes, or any public money or goods<sup>10</sup>; or
- s. 18. (5) Is guilty of any other offence<sup>11</sup> of a fraudulent nature<sup>12</sup> not before in this Act particularly specified, or of any other disgraceful conduct<sup>13</sup> of a cruel, indecent<sup>14</sup> or unnatural kind,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.<sup>15</sup>

#### NOTE.

1. By the A. & A.F. (A.) Act, 1925, this section, which formerly related only to soldiers, was made applicable to every person subject to military law; hence officers can now be tried under this section for the offences therein mentioned.

2. To *malingering* is to pretend illness or infirmity which does not exist, in order to escape duty.

3. To *feign* disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms which, to his knowledge, are not due to such disease or infirmity, but have been produced artificially for purposes of deceit; e.g., simulating fits or mental disease.

4. Paras. (1)–(3). The charge should show in what way an accused person has malingered, or what disease or infirmity he has feigned or produced, or what particular injury has been committed, or of what misconduct or wilful disobedience he has been guilty. 'In a case under para. (2), evidence will have to be given of the intent, but it would be sufficient to raise a presumption of intent if the act were shown to have been done wilfully and not accidentally.

5. The misconduct must be with the intent of producing or aggravating the disease, or delaying its cure, as the case may be. To produce disease is wilfully to cause genuine disease to develop; e.g., by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a person liable under this paragraph. Nor would a person incur liability under it who refuses to undergo a surgical operation.

A soldier cannot be punished for disobedience of an order to be vaccinated, or for refusing to be inoculated, or to allow an anaesthetic to be administered.

6. Where an accused is charged with theft, the ownership of the property alleged to have been stolen should be clearly proved in evidence, and its identity established (where possible) by production and identification in court; if not produced, its non-production should be accounted for.

It is not possible under this paragraph to support a charge of stealing the property of a person who was in fact dead at the time of the theft.

7. See note to s. 17; Ch. III, paras. 30–39; Ch. VII, para. 50, *et seq.*

Under s. 56, a person charged with stealing may be found guilty of embezzlement or of fraudulent misapplication; or if charged with embezzlement, may be convicted of stealing or of fraudulent misapplication.

8. If a soldier steals the greatcoat of his comrade, he can be charged with stealing it either as being public property or as being the property of a person subject to military law; for although the greatcoat is owned by the public, the comrade has a "special property" in it by reason of his lawful possession.

9. The paragraph speaks only of a *regimental* mess or *regimental* institution. (For definition of "regimental," see s. 190 (17)). "When the mess does not fall within the definition of "regimental," a charge cannot be brought under this paragraph, and the offender would have to be tried under s. 41.

It has been ruled that a branch of the Royal Army Temperance Association is not a regimental institution within the meaning of this paragraph.

10. If it turns out that the property belongs to some person or persons not included in the category contained in this paragraph, the accused must be acquitted, as the offence could in that case only have been charged under s. 41.

The value of articles in respect of which the offender should be sentenced to stoppages must always be stated in the particulars of the charge; (see R.P. 13 (F) and note, and K.R. 626). Part I.

11. A charge under this paragraph for anything that is an offence under any previous enactment of the Act will be bad. ss. 18-20.

12. *Of a fraudulent nature.* The particulars must show that there was fraud in the act with which the accused is charged; irregularity in accounts due to incompetence or ignorance of book-keeping will not be sufficient.

The following are examples of offences which may be charged under this paragraph—With intent to defraud, presenting for signature a pay and mess roll containing entries known to be false; passing a worthless cheque or “flash” note; charging money for railway warrants, tickets or concession vouchers to which an officer or soldier is entitled free of charge.

A reservist who has wrongfully enlisted cannot be charged with obtaining reserve pay by false pretences or fraud.

13. *Disgraceful conduct.* The particulars of the charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

14. *Of an indecent kind.* Offences of an indecent kind against children and young persons of the female sex should be charged under s. 41 and not under this section. The expediency of trying such offences before a civil court should be considered in each case, and where they are committed against natives of India or of a colony, the cases should usually be dealt with by a civil court if this course can reasonably be followed. Where trial by court-martial is proposed, the charge and summary of evidence must, at home stations, be submitted to the Judge-Advocate-General before trial is ordered (K.R. 630), and a judge-advocate should be appointed in all such cases, whether at home or abroad, in order that the court may have the benefit of his advice, particularly with regard to the danger of accepting the uncorroborated evidence of witnesses who are shown to be accomplices. (See Ch. VI, para. 45.)

15. A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. (See s. 180 (18), and P.W. 965.)

### *Drunkenness.*

19. Every person subject to military law who commits the following offence; that is to say, Drunkenness.

The offence of drunkenness,<sup>1</sup> whether on duty or not on duty, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding five pounds<sup>2</sup>:

Provided that, where the offence of drunkenness is committed by a soldier not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months, with or without the addition of the aforesaid fine.

### NOTE.

1. See generally as to this offence Ch. III, paras. 42-48, and s. 46 (2) (3), and note. Witnesses should be required to state their reasons for their opinion that an accused was drunk.

2. Drunkenness is the only offence triable by court-martial or C.O. for which a fine may be imposed. The fine, if awarded by court-martial, cannot exceed five pounds; if by a C.O. it cannot exceed two pounds (s. 46 (2) (b); K.R. 579.)

### *Offences in relation to Persons in Custody.*

20. Every person subject to military law who commits any of the following offences; that is to say, Permitting escape of person in custody,

- Part I.** (1) When in command of a guard, piquet, patrol, or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge<sup>1</sup>; or
- ss. 20, 21.** (2) Wilfully or without reasonable excuse<sup>2</sup> allows to escape<sup>3</sup> any person who is committed to his charge,<sup>4</sup> or whom it is his duty to keep or guard,

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

#### NOTE.

1. In a charge under para. (1), if proof is given that the person in custody was released, the onus is on the accused to show proper authority. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

2. In a charge under para. (2), if there is a doubt as to the accused having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and it will be open to the court, under the provisions of s. 58 (5), to find that he acted without reasonable excuse. A man commits this offence *wilfully* by any act or omission intended to allow the escape of the person committed to his charge, or whom it was his duty to guard or keep. See Ch. VII, para. 23.

3. Where an escort consisting of a corporal and a private loses the soldier in their charge, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the soldier while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the soldier during his absence.

4. A deserter or absentee without leave who surrenders himself, and who is being conducted by a N.C.O. to rejoin his unit (K.R. 709), is not "committed to the charge" of the N.C.O. conducting him within the meaning of this section.

Irregular  
arrest or  
confinement.

21. Every person subject to military law who commits any of the following offences; that is to say,

- (1) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation<sup>1</sup>; or
- (2) Having committed a person to the custody of any officer, non-commissioned officer, provost marshal, or assistant provost marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter to the officer, non-commissioned officer, provost marshal, or assistant provost marshal, into whose custody the person is committed, an account in writing<sup>2</sup> signed by himself of the offence with which the person so committed is charged; or
- (3) Being in command of a guard, does not as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence

so far as known to him; and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account, Part I.  
—  
ss. 21-23.

shall, on conviction by court-martial, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved it will lie on the accused to prove the necessity for keeping the person in question in custody without taking the steps mentioned.

2. See note to s. 45; and as to entry of charge in guard report, K.R. 544.

22. Every person subject to military law who commits the following offence; that is to say, Escape from  
confinement.

Being in arrest or confinement,<sup>1</sup> or in prison or otherwise in lawful custody,<sup>2</sup> escapes,<sup>3</sup> or attempts to escape, shall, on conviction by court-martial, be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. As to arrest and confinement, see Ch. IV, paras. 1-18.

2. A soldier in open arrest is "in lawful custody."

A man undergoing field punishment (though in lawful custody) is not "in arrest."

An accused may be convicted under this section for escaping from any lawful custody, e.g., from a civilian who under s. 154 has arrested him as a deserter.

3. An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

A soldier who escapes from arrest and then absents himself without leave may legally be charged with, and convicted of, both offences; but as a rule it is preferable to charge only the absence, alleging in the particulars (as increasing the gravity of the offence) that it was committed "when in arrest."

#### *Offences in relation to Property.*

23. Every person subject to military law who commits any of the following offences; that is to say, Corrupt dealings in respect of supplies to forces.

- (1) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
- (2) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's forces,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Part I. 24. Every soldier who commits any of the following offences<sup>1</sup>; that is to say,

s. 24.

Deficiency in  
and injury  
to equip-  
ment.

- (1) Makes away with,<sup>2</sup> or is concerned in making away with (whether by pawning, selling, destruction, or otherwise howsoever),<sup>3</sup> his arms, ammunition, equipments, instruments, clothing,<sup>4</sup> regimental necessities, or any horse of which he has charge, or any public property issued to him for his use or entrusted to his care for military purposes<sup>5</sup>; or
- (2) Loses by neglect<sup>6</sup> anything before in this section mentioned<sup>5</sup>; or
- (3) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military or air force decoration<sup>7</sup> granted to him; or
- (4) Wilfully injures<sup>8</sup> anything before in this section mentioned, or any property belonging to a comrade, or to an officer,<sup>9</sup> or to any regimental mess or band, or to any regimental institution, or any public property; or
- (5) Ill-treats any horse or other animal used in the public service,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. As to a charge under this section, see K.R. 625-629; R.P. App. I; note as to use of Forms of Charges, para. (23), p. 701. As to liability of civilian pawnbroker, &c., see s. 156.

2. *Making away with* is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in law steal. Unless there is some positive act of pawning, sale, &c., a charge for making away with should not be preferred, but a charge of losing should be preferred under para. (2). See K.R. 625.

3. This paragraph shows clearly that, whether arms are pawned, sold, destroyed, or otherwise made away with, the military offence is the same, namely, the making away with them; but the degree of the offence may differ according to whether they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly.

4. *Clothing* includes clothing supplied to a man in hospital.

5. A charge under paras. (1) or (2) of making away with, &c., money or property not mentioned in para. (1) would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s. 18 or s. 41, or if there was proof of any wilful act or neglect, the soldier might, in some circumstances, be charged with an offence under s. 40.

6. This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessities, &c., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part.

In a trial for an offence under this paragraph, the certified copy of the record in the regimental books, on A.F. B.115, showing that certain articles were deficient, is *prima facie* evidence that they were deficient. If no evidence except A.F. B.115 is obtainable, the prosecution are justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated in A.F. B.115, the court may convict.<sup>1</sup> Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce evidence, if possible, in support of their case in so far as such articles are concerned. For such purpose, the court might, if necessary, grant an adjournment under R.P. 65 (A); but when for any reasonable cause—such as lapse of time since the deficiency arose, and



no witnesses consequently being available to rebut the evidence of or produced by the accused—the court must use their discretion as to their finding in respect of the articles in question. In all cases where A.F. B.115 is not produced at the trial, evidence must be produced to show that at some previous specified date the accused had been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave, the form will usually show as missing some articles which the man in fact brings back with him. The court must not, of course, convict him in respect of articles so returned.

7. *Decoration.* See s. 190 (18). Losing by neglect a decoration is not an offence.

8. *Wilfully injures.* A charge for injuring the property here mentioned must be laid under this section, and not under s. 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms, &c., or was mere carelessness. In the latter case no offence under this section would be committed. The principles to be observed in estimating the loss of or damage to equipment are shown in Equipment Regulations, Part I, 1923, para. 104. See also s. 138 (4) and note and R.P. 13 (F) and note.

9. As to the disqualification of an officer having a personal interest in the case for sitting on a court to try an offence under this paragraph, see R.P. 19 (B) (v) and note.

Part I.

ss. 24, 25.

### *Offences in relation to False Documents and Statements.*

25. Every person subject to military law who commits any of the following offences; that is to say,

- (1) In any report, return, muster roll, pay list, certificate, book, route, or other document<sup>1</sup> made or signed by him, or of the contents of which it is his duty<sup>2</sup> to ascertain the accuracy—
  - (a) Knowingly makes or is privy to the making of any false or fraudulent statement<sup>3</sup>; or
  - (b) Knowingly makes or is privy to the making of any omission with intent to defraud<sup>4</sup>; or
- (2) Knowingly and with intent to injure any person, or knowingly and with intent to defraud,<sup>4</sup> suppresses, defaces, alters, or makes away with any document which it is his duty<sup>2</sup> to preserve or produce<sup>5</sup>; or
- (3) Where it is his official duty<sup>2</sup> to make a declaration respecting any matter, knowingly makes a false declaration,<sup>5</sup>

Falsifying official documents and false declarations.

shall, on conviction by court-martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

### **NOTE.**

1. The "other document" here contemplated is one executed by the accused in his capacity as an officer or soldier, and not in some civil capacity.

2. The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

3. A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under para. (1) (a).

4. In a charge under para. (1) (b) or para. (2) involving an intent to defraud, it will not be necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown.

It will be noted that the making of an omission with intent only to deceive is not made an offence under para. (1) (b); nor is the alteration, etc., of a document an offence under para. (2) if it is effected only with an intent to deceive.

5. The particulars of a charge under para. (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration;

Part I. but where the situation of the accused is proved, the court may use their military knowledge to infer his duty; *e.g.*, in the cases dealt with in specimen charge-sheets Nos. 74 and 75 (p. 728), the court might use their military knowledge to infer from the fact that the accused was a company quartermaster-serjeant that it was his duty to preserve the documents in question.

83.25-27.

Para. (3) does not include statements in a summary of evidence or verbal statements.

Neglect to report, and signing in blank.

26. Every person subject to military law who commits any of the following offences; that is to say,

- (1) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or
- (2) Refuses or by culpable neglect omits to make or send a report or return which it is his duty<sup>1</sup> to make or send,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. The particulars must show that it was the duty of the accused to make the report or return, but where the situation of the accused is proved the court may use their military knowledge to infer his duty. See note 5 to s. 25. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

False accusation, or false statement.

27. Every person subject to military law who commits any of the following offences; that is to say,

- (1) Being an officer or soldier, makes a false accusation<sup>1</sup> against any other officer or soldier, knowing such accusation to be false; or
- (2) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or
- (3) Being a soldier, falsely states to his commanding officer<sup>2</sup> that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the navy or air force, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the navy or air force; or
- (4) Being a soldier, makes a wilfully false statement to any military officer or justice<sup>3</sup> in respect of the prolongation of furlough,<sup>4</sup>

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. A mere false statement, not involving an accusation (*e.g.*, a letter to a friend containing insinuations against a N.C.O.), is not within the meaning of this paragraph. (See also R.P. 39, note 4.)

2. *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer; but the term "commanding officer" will include any one whose duty it would be under the K.R. or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the C.O. is a statement to the C.O. As to a false confession of desertion made to any other authority, see s. 152.

3. *Justice.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

4. This paragraph applies only to false statements made in order to obtain, or otherwise in respect of, a prolongation; it does not cover false excuses for overstaying leave made on return.

Part I.  
—  
ss. 27, 28.

### *Offences in relation to Courts-martial.*

28. Every person subject to military law who commits any of the following offences<sup>1</sup>; that is to say,

Offences in relation to courts-martial.

- (1) Being duly summoned or ordered to attend as a witness before a court-martial,<sup>2</sup> makes default in attending; or
- (2) Refuses to take an oath or make a solemn declaration<sup>3</sup> legally required by a court-martial to be taken or made; or
- (3) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or
- (4) Refuses when a witness to answer any question to which a court-martial may legally require an answer; or
- (5) Is guilty of contempt<sup>4</sup> of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance<sup>5</sup> in the proceedings of such court,

shall, on conviction by a court-martial, other than the court in relation to or before whom the offence was committed, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned:

Provided that where a person subject to military law<sup>6</sup> is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court if they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president, order the offender to be imprisoned, with or without hard labour, or, in the case of a soldier, to undergo detention for a period not exceeding twenty-one days.<sup>7</sup>

### NOTE.

1. An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law the court may order him to be imprisoned, or, if he is a soldier, to undergo detention, for not more than 21 days (see proviso). If the offender is a soldier, he will, as a general rule, be sentenced to detention and not to imprisonment. For form of commitment, see Form U, p. 786.

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures.

A civilian guilty of any of the offences mentioned in this section is punishable by a civil court under s. 126. See note 1 to that section.

2. See generally as to summoning and attendance of witnesses, R.P. 15, 75-78.

- Part I. 3. A person refusing to take an oath must be given an opportunity of making a "declaration."
- ss. 28-30. 4. The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members are assembled.
5. The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.
6. S. 48 (6) which prohibits a district court-martial from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under this proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority.
7. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.
- To imprison or send to detention for contempt of court a person who is under trial, though legal, requires very exceptional circumstances to justify it; punishment so inflicted must immediately follow the contempt, and cannot be an addition to any sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence. The court must adjourn until the expiration of the punishment inflicted for the contempt, and must record upon the proceedings the facts which have necessitated the order.

False evidence.

29. Every person subject to military law who commits the following offence<sup>1</sup>; that is to say,

When examined on oath or solemn declaration before a court-martial<sup>2</sup> or any court or officer authorised by this Act to administer an oath, wilfully<sup>3</sup> gives false evidence, shall be liable, on conviction by court-martial, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. This section will be applicable to an accused person who applies to give evidence himself, but a charge should not be preferred against him except in a very flagrant case.

As ss. 46 (6), 47 (4), 70 (5) (6), and R.P. 3, 4, 9 (C), 124 (H), 125 (E) provide that evidence may be given on oath before a court of inquiry, or a C.O., or an authority dealing summarily with a charge under s. 47, or an officer taking a summary of evidence, a person subject to military law who wilfully gives false evidence on oath before a court or officer duly authorised to administer an oath, is guilty of an offence under this section. The evidence before a court of inquiry upon an absentee (s. 72) and upon a recovered prisoner of war must be given on oath or declaration (R.P. 124 (H)).

2. The proceedings of the court-martial before which the false swearing is alleged to have taken place are not admissible as evidence that the accused swore as charged. The member of the court who recorded the proceedings, or some other person who heard the evidence given, must prove this fact by oral evidence. The lawful custodian of the proceedings (or his deputy) should, however, attend the court with the proceedings, for a witness who recorded them may use them to "refresh his memory." The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. See Ch. III, para. 56, and Ch. VII, para. 72.

3. Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

#### *Offences in relation to Billeting.*

Offences in relation to billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting<sup>1</sup>); that is to say,

- (1) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or Part I.  
—  
ss. 30, 31.
- (2) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses have been billeted, or to the making up and transmitting of an account of the money due to such person; or
- (4) Wilfully demands<sup>2</sup> billets which are not actually required for some person or horse entitled to be billeted; or
- (5) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability; or
- (6) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty; or
- (7) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall, on conviction by court-martial,<sup>3</sup> be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

#### NOTE.

1. The provisions as to billeting are contained in Part III, ss. 102-111, and ss. 119-121.

2. *Wilfully demands*. The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

3. See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

#### *Offences in relation to Impressment of Carriages, &c.*

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages<sup>1</sup>); that is to say,

- (1) Wilfully demands any carriages, animals, vessels, food, forage, or stores which are not actually required for the purposes authorised by this Act; or
- (2) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment

*Offences in relation to the impressment of carriages, &c., and their attendants.*

- Part I.** of sums due for carriages or as regards the weighing of the load ; or
- ss. 31, 32.** (3) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry ; or
- (4) Does not discharge as speedily as practicable any carriage, animal, or vessel, furnished in pursuance of the provisions of this Act relating to the impressment of carriages ; or
- (5) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person ; or
- (6) Ill-treats or permits such person in charge to be ill-treated ; or
- (7) Uses or offers any menace to or compulsion on a constable to make him provide any carriage, animal, vessel, food, forage, or stores which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, vessels, food, forage, or stores, or tending to induce him to do anything contrary to his said duty ; or
- (8) Forces any carriage, animal, vessel, food, forage, or stores from the owner thereof,

shall, on conviction by court-martial,<sup>2</sup> be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

**NOTE.**

1. The provisions as to the impressment of carriages, &c., are contained in Part III, ss. 112-121.

2. As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

*Offences in relation to Enlistment.*

**Enlistment of soldier, airman, or sailor discharged with ignominy or disgrace.**

**32.—(1)** Every person having become subject<sup>1</sup> to military law, who is discovered to have committed the following offence ; that is to say,

Having been discharged with disgrace<sup>2</sup> from any part of His Majesty's military or air forces, or having been dismissed with disgrace from the navy,<sup>3</sup> has afterwards enlisted<sup>4</sup> in the regular forces without declaring<sup>5</sup> the circumstances of his discharge, or dismissal,<sup>6</sup>

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.<sup>7</sup>

(2) For the purpose of this section, the expression "discharged with disgrace from any part of His Majesty's military or air forces" means discharged with ignominy, discharged as incorrigible and worthless,<sup>a</sup> discharged for misconduct, or discharged on account of conviction for felony<sup>b</sup> or of a sentence of penal servitude.

Part 1.  
—  
ss. 32, 33.

#### NOTE.

1. *Having become subject*, i.e., in the case of the regular forces, having signed the declaration and taken the oath (s. 80 (4) (b)). The wording in this and the next section is different from that in other sections ("every person subject, &c., who commits," &c.), because at the moment of committing the offence the man is not actually subject to military law.

2. *Discharged with disgrace*. It has been ruled that the disgrace must be by reason of some misconduct after and not before the man's previous enlistment.

3. Where a person enlists who under s. 52 of the Naval Discipline Act, has been dismissed, but not dismissed with disgrace, the charge should be laid under s. 33.

4. *Enlisted*. The original or the duplicate attestation paper must be produced at the trial; (see s. 163 (1) (a)).

5. Failure to declare the circumstances of discharge, &c., is *prima facie* proved by the attestation paper showing answers to have been given inconsistent with such declaration.

6. A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

7. For a corresponding offence in the case of a man enlisting in the Territorial Army, see T.R.F. Act, s. 11. No corresponding offence exists in the case of the Supplementary Reserve; a man enlisting in the Supplementary Reserve after having been discharged with disgrace from another part of His Majesty's forces, should usually be dealt with under s. 99, but if dealt with while subject to military law the charge may be laid under s. 33.

A person charged with improper enlistment under this section should not also be charged under s. 33 with "false answer" made on the occasion of such enlistment.

8. "Incorrigible and worthless" is no longer a cause of discharge given in K.R. 370.

9. *Felony*. Theft is not necessarily a felony and when the theft which leads to a soldier's discharge is actually a felony the cause of discharge should be specifically worded "in consequence of having been convicted by the civil power of felony" in order that the discharge may come within the definition of "discharged with disgrace." In all cases of this kind, therefore, the copy of the record of civil conviction should be carefully scrutinized in order to ascertain whether the offence was a felony or a misdemeanour. As to what offences are felonies, see table at end of Ch. VII.

33. Every person having become subject<sup>1</sup> to military law who is discovered to have committed the following offence<sup>2</sup>; that is to say,

False answers or declarations on enlistment.

To have made a wilfully false answer<sup>3</sup> to any question<sup>4</sup> set forth in the attestation paper<sup>5</sup> which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested,

shall, on conviction by court-martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

#### NOTE.

1. *Having become subject*. See note 1 to the preceding section.

2. Men enlisting after being dismissed from the Navy as "objectionable," or in any other circumstances (except "with disgrace," as to which see s. 32 (1)) will be proceeded against under this section.

When a soldier who has improperly enlisted into the regular forces while belonging to the Army Reserve is tried by court-martial for his offence within

Part I. three months of the date of his improper enlistment, but not otherwise, the words "and by his enlistment obtained a free kit of necessaries, value —," will be added to the particulars of the charge (see specimen ss. 33-35. charge-sheet No. 83, p. 730) and (unless the accused pleads guilty) proved in evidence, in order to enable the court to sentence him to stoppages of pay for the value of the kit as stated in the charge.

If the soldier is relegated to the Army Reserve after conviction by court-martial, the stoppages will be enforced, but if he is held to serve on his last attestation, the sentence of stoppages will be remitted.

If the soldier is relegated to the Army Reserve, without trial, within three months from the date of his improper enlistment from the Army Reserve, he will be required to make good the value of the free kit of necessaries in accordance with the provisions of the Clothing Regulations (K.R. 624).

3. The answer must be wilfully false; thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

A person charged with "fraudulent enlistment" (s. 13) or "improper enlistment" (s. 32) should not also be charged under this section with "false answer" made on the occasion of such enlistment.

4. A false answer as to age should not, as a rule, be made the subject of a charge.

5. *Attestation paper.* The original or the duplicate must be produced at the trial. (See s. 163 (1) (a)).

As to attestation and attestation papers, see ss. 80, 94.

General  
offences in  
relation to  
enlistment.

34. Every person subject to military law who commits any of the following offences; that is to say,

- (1) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced<sup>1</sup> that by enlisting he commits an offence against this Act; or
- (2) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NORR.

1. *So circumstanced*, i.e., where he has been discharged with disgrace, so that he commits an offence under s. 32; or where he belongs to the regular forces, or otherwise, so that he is guilty of fraudulent enlistment under s. 13; or where, having previously served, he again enlists without declaring the circumstances of his previous service, so that he commits an offence under s. 33, the attestation being part of the enlistment.

#### *Miscellaneous Military Offences.*

Traitorous  
words.

35. Every person subject to military law who commits the following offence; that is to say,

Uses traitorous or disloyal words<sup>1</sup> regarding the Sovereign, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

NORR.

1. The words used must be set out in the charge; they may be either spoken, or written, or printed. It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.



**36.** Every person subject to military law who commits the following offence ; that is to say, Part I.

Whether serving with any of His Majesty's forces or not, without due authority,<sup>1</sup> either verbally or in writing,<sup>2</sup> or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service,<sup>3</sup> ss. 36-38.  
Injurious disclosures.

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.<sup>4</sup>

#### NOTE.

1. The unauthorised communication of intelligence to the enemy on active service is punishable under s. 5 (4).

2. As to injurious disclosures by private letters, see note 2 to s. 5; and as to publishing military information, K.R. 522.

3. Particulars of a charge under this section must show how and when effects injurious to His Majesty's service were produced.

4. See also the Official Secrets Acts, 1911 and 1920, on p. 895, *et seq.*

**37.** Every officer or non-commissioned officer who commits any of the following offences ; that is to say, Ill-treating soldier.

(1) Strikes<sup>1</sup> or otherwise ill-treats any soldier<sup>2</sup>; or

(2) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,<sup>3</sup>

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment or such less punishment as is in this Act mentioned.

#### NOTE.

1. Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (2) (c).

2. As the word "soldier" includes N.C.O., it follows that the offence of one N.C.O. striking or ill-treating another who is not his superior falls within this section. Striking a superior officer is dealt with under s. 8. The case of one private soldier striking another should be dealt with under s. 40.

3. As to stoppages in respect of the amount detained, see s. 137 (3).

**38.** Every person subject to military law who commits any of the following offences ; that is to say, Duelling and attempting to commit suicide.

(1) Fights, or promotes, or is concerned in or connives at fighting a duel<sup>1</sup>; or

(2) Attempts to commit suicide,<sup>2</sup>

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

## Part I.

## NOTE.

ss.38-40. 1. An officer carrying a challenge is punishable under para. (1). If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

2. A man should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life. A medical officer should invariably attend the taking of the summary of evidence, and give oral evidence, which should include his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

Refusal to deliver to civil power officers and soldiers accused of civil offences.

39. Every person subject to military law who commits any of the following offences<sup>1</sup>; that is to say,

On application being made to him neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,<sup>2</sup>

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

## NOTE.

1. These offences may be committed not only in the United Kingdom, but in any dominion or British possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section should require to see the warrant or other authority for the delivery over or apprehension; and if none exists, no offence is committed by refusing the demand.

2. As to the cases in which a soldier of the regular forces is exempt from civil process, see s. 144 (1) and (2).

Conduct to prejudice of military discipline.

40. Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect to the prejudice of good order and military discipline,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

## NOTE.

See Ch. III, para. 60.

A charge under this section must recite its actual words, *i.e.*, there must be charged "conduct" (or "an act," or "disorder," or "neglect" (as the case may be)) "to the prejudice of good order and military discipline." But, of course, conduct, &c., is not brought within the scope of the section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct, &c., proved was to the prejudice both of good order and of military discipline, having regard to its nature and to the circumstances in which it took place.

"Neglect" to be punishable under this section must be wilful or culpable, and not merely the result of forgetfulness, error of judgment, or inadvertence. Attempts to commit "military" offences can, as a rule, be charged under this section, unless, as in the case of an attempt to desert (see s. 12 (1) (a)), special provision is made elsewhere. Part I.  
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ss. 40, 41.

A charge of displaying the white flag, where the evidence is not sufficient to justify a charge under s. 4 or s. 5, will be laid under this section: K.R. 620.

Words spoken "of and concerning" a superior must only be made the subject of a charge under this section where the speaker used them with a guilty intent. In some cases it may be necessary to add to the particulars of the charge words explaining the meaning which it is alleged that the language used was intended to convey.

The proviso to the section must not be interpreted as forbidding the addition in a proper case of an alternative charge under this section.

If it is reasonably clear that a man—if guilty of anything—is guilty of one of the more serious offences mentioned in previous sections, a C.O. should not arrogate jurisdiction to himself by preferring a charge under this section: on the other hand, if there is real doubt whether one of the more serious offences has been committed, and the C.O. considers that the circumstances justify permit a less serious charge under this section being preferred, he may properly take the latter course: *Haddon v. Evans* (1919) 35 T.L.R. 642.

The following are a few instances of offences not uncommonly charged under this section:—

Giving a cheque which is subsequently dishonoured where there is no reasonable ground for supposing that it will be honoured on presentation.

Negligent performance of duties connected with money or stores resulting in a deficiency and loss.

Being in improper possession of public property or of property belonging to an officer or comrade (where there is no evidence of actual theft). See K.R. 621.

Being in some place away from his unit on a particular date when his duty required him to be with his unit.

Sleeping out instead of in billet.

Improperly using Government car and petrol for private purposes.

Borrowing money from subordinates.

Producing a medical certificate, knowing it not to be genuine.

Being in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine.

Improperly wearing uniform or rank badges (or ribbons or medals) to which he is not entitled.

Giving false name to police.

Accepting gifts as an inducement for arranging or excusing duties.

Being unfit for duty by reason of previous indulgence in alcoholic stimulants.

Negligently wounding or injuring self.

Improperly obtaining money in return for railway warrant or ticket.

Improperly obtaining "concession vouchers."

Improperly using or obtaining railway warrants.

The Act recognises no such offence as "making a frivolous complaint"; but the repetition of baseless complaints may amount to an offence under this section: so too may a complaint so framed as to be offensive or indicative of insubordination, &c.; see *Haddon v. Evans* (1919) 35 T.L.R. 642.

### *Offences punishable by ordinary Law<sup>1</sup>.*

41. Subject to such regulations<sup>2</sup> for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial,<sup>3</sup> and on conviction<sup>4</sup> to be punished as follows; that is to say,

Offences punishable by ordinary law of England.

- Part I.** (1) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned ;  
 — ss. 41, 42. (2) If he is convicted of murder, be liable to suffer death ;  
 and  
 (3) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and  
 (4) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and  
 (5) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows :—

- (a) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within His Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service<sup>1</sup> or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court ;
- (b) A person subject to military law when in His Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

#### NOTE.

1. See Ch. VII generally as to offences punishable by the ordinary law, and as to the cases in which the jurisdiction given by this section should be exercised, see paras. 1-3 of that chapter. Subject to proviso (a), this section in effect gives absolute jurisdiction to a court-martial to try a person subject to military law for any civil offence.

2. *Subject to such regulations, &c.* See provisos (a) and (b).

3. See specimen charge-sheets, Nos. 95-107, pp. 732-4.

As to reference to the Judge-Advocate-General of cases of fraud or indecency, see note to s. 17 and note 14 to s. 18.

4. See s. 56 (6) (and note), which provides for an accused person, when tried by court-martial for a civil offence, to be found guilty of certain other offences.

5. For definition of *active service*, see s. 189.

#### Redress of Wrongs.

Mode of complaint by officer.

42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Army Council in order to obtain justice, who are hereby

required to examine into such complaint, and (if so required by the officer) through a Secretary of State make their report to His Majesty in order to receive the directions of His Majesty thereon. **Part I.**  
—  
**ss. 42, 43.**

#### NOTE.

The right of complaint is in the first instance to the Army Council, but the officer may require the Army Council to report to the Sovereign through the Secretary of State. It is the custom of the service that a complaint should be forwarded through the C.O. of a unit; and an officer would not be justified in deviating from this course unless the C.O. should refuse, or unreasonably delay, to forward it. In such case an officer, on addressing himself directly to the general in command or brigade commander, should apprise his C.O. of his doing so, and must observe in the channel of approach to the Army Council each intermediate gradation of command in so far as he is concerned so to do. An officer should indicate specifically whether his complaint is to the Army Council or the Sovereign.

As regards complaints to the Sovereign, although the Army Council are required to examine into the complaint, they are not debarred from expressing their own view of the case, and even an expression of opinion by an intermediate authority may in some cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign.

This section does not limit the right of the Sovereign to receive complaints, but only controls the manner in which officers thinking themselves wronged are to approach the Sovereign.

An exception to the general rule laid down in this section is to be found in K.R. 100 (see also K.R. 508) to the effect that if any officer or soldier desires to bring any grievance to the notice of an inspecting officer he is to be afforded an opportunity of doing so.

When two or more officers are lent to or are seconded for service with a civil Department of State, &c., and one of them in the course of his employment, and solely in his capacity as an official of the civil Department, &c., does an act by which the other feels aggrieved, the officer who considers himself wronged cannot make a complaint under this section, but can only complain to the head or other proper authority in the civil Department, &c., in which both officers are employed, or have recourse to any other civil remedy that may be open to him. Such a wrong does not fall within the scope of this section.

Speaking generally, this section is not available to seconded officers in respect of matters arising in the course of seconded employment while they are outside the immediate jurisdiction of the Army Council, e.g., the terms and conditions of their employment.

European officers of the Indian Army on attaining substantive rank higher than that of lieutenant-colonel cease to belong to the Indian Army, and their right of complaint then comes under this section. The right of complaint of European officers of the Indian Army not above the substantive rank of lieutenant-colonel is under s. 180.

A false accusation or false statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

**43.** If any soldier thinks himself wronged in any matter<sup>1</sup> by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer,<sup>2</sup> and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the prescribed general officer or brigadier<sup>3</sup> or, in the case of a soldier serving in India, to such officer as the Commander-in-Chief of the Forces in India with the approval of the Governor-General of India in Council may appoint; and every officer to whom a complaint is made in pursuance of this section

<sup>1</sup> Mode of complaint by soldier.

**Part I.** shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take  
**ss. 43, 44.** such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

#### NOTE.

1. Complaints may be made respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section—that is to say, first to the captain and then to the C.O. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the C.O.; and it is only if the C.O. similarly refuses or delays that a direct application can be made to the prescribed officer. The captain, in the one case, and the C.O. in the other, ought to be informed of the application being made to his superior. See K.R. 508.

In addition to the right of complaint under this section, a soldier has rights of complaint to inspecting officers under K.R. 100 and 508. See note to s. 42.

A false accusation or false statement made on preferring a complaint under this section is punishable under s. 27 (1) (2); but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see note to s. 40.

2. The C.O. to whom the complaint is made will usually be the C.O. as defined in R.P. 129, but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the C.O. of the complaining soldier as defined by that rule, and the complaint will then be dealt with as properly made.

3. *Prescribed general officer or brigadier*: see R.P. 126 (A).

#### *Punishments.*

Scale of  
punishments  
by courts-  
martial.

**44. Punishments<sup>1</sup>** may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers,<sup>2</sup> according to the scale following :

- (a) Death<sup>3</sup> ;
- (b) Penal servitude<sup>4</sup> for a term not less than three years ;
- (c) Imprisonment,<sup>5</sup> with or without hard labour, for a term not exceeding two years ;
- (d) Cashiering<sup>6</sup> ;
- (e) Dismissal<sup>6</sup> from His Majesty's service ;
- (f) Forfeiture in the prescribed manner of seniority of rank,<sup>7</sup> either in the army or in the corps to which the offender belongs, or in both ; or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion ;
- (g) Reprimand, or severe reprimand ;
- (gg) Stoppages<sup>8</sup>.

In the case of soldiers,<sup>9</sup> according to the scale following :

- (h) Death<sup>3</sup> ;
- (j) Penal servitude<sup>4</sup> for a term not less than three years ;
- (k) Imprisonment,<sup>5</sup> with or without hard labour, for a term not exceeding two years ;

- (kk) Detention<sup>10</sup> for a term not exceeding two years ; Part I.  
 (l) Discharge with ignominy from His Majesty's service<sup>11</sup> ; —  
 (m) In the case of a non-commissioned officer, forfeiture, in s. 44.  
 the prescribed manner, of seniority of rank,<sup>12</sup> or reduction<sup>13</sup> to a lower grade, or to the ranks ;  
 (mm) In the case of a non-commissioned officer, reprimand or severe reprimand<sup>14</sup> ;  
 (n) Forfeitures,<sup>15</sup> fines<sup>16</sup> and stoppages.<sup>17</sup>

Provided that—

- (1) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act<sup>18</sup> as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment :
- (1A) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment :
- (1B) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences<sup>19</sup> :
- (2) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment<sup>20</sup> :
- (2A) The Army Council may restore the whole or any part of any lost seniority or forfeited service in the case of an officer who may perform good or faithful service, or who may otherwise be deemed by the Army Council to merit such restoration :
- (3) An officer or a non-commissioned officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand :
- (4) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service<sup>21</sup> :
- (5) Where a soldier on active service<sup>22</sup> is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment,<sup>23</sup> other than flogging or attachment to a fixed object, as may be directed by rules to be made from time to time by a Secretary of State, and such field punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb :
- (6) In addition to or without any other punishment in respect of an offence committed by a soldier on active service,<sup>22</sup> it shall be lawful for a court-martial to order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding three months<sup>24</sup> :

Part I. [*Provisos (7) and (8) repealed.*]

s. 44.

- (9) All rules with respect to field punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament :
- (10) For the purpose of commutation of punishment the field punishment above mentioned shall be deemed to stand in the scale of punishments next below detention :
- (11) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subject to forfeiture of any deferred pay, service towards pension, naval, military or air-force decoration or naval, military, or air-force reward,<sup>26</sup> in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts :
- (12) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act<sup>26</sup> to be made from his ordinary pay :
- (13) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict or cause to be inflicted on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.<sup>27</sup>

NOTE.

1. See generally K.R. 652-656 as to the principles to be observed by a court-martial in awarding sentence.

2. An officer cannot be tried by district court-martial, nor can a district court-martial award a sentence of death or penal servitude; s. 48 (6).

3. *Death.* As to notifying accused that a sentence of death has been passed, see note (b), R.P., App. II, p. 782.

4. *Penal servitude.* See as to the execution of a sentence of penal servitude, ss. 58-62, and notes. A soldier sentenced to penal servitude may in addition be sentenced to be discharged with ignominy; (proviso (4)).

It is competent for a court-martial in cases where it is authorised to impose a term of penal servitude, to award penal servitude for life (except in cases under s. 41 (5) for which a maximum sentence of penal servitude has been fixed by law—see table at end of Ch. VII) or for any term not less than three years.

5. *Imprisonment.* As to rules for awarding terms of imprisonment in days, months or years, as the case may require, see K.R. 654. As to execution of a sentence of imprisonment, see ss. 63-67, and notes; as to the date from which a sentence is to be reckoned, see s. 68 (1); and as to the limitation of sentences of imprisonment, see proviso (1B).

A soldier convicted by court-martial of an offence under ss. 17, 18 (4), 18 (5), or 41, whom it is not desired to retain in the Army, should be sentenced to imprisonment, but in case he is convicted of such offence, or of any other military offence, and it is desired to retain him in the Army, he should be sentenced to detention. K.R. 652 lays down principles as to when imprisonment, and when detention, ought to be awarded.

A soldier sentenced to imprisonment may in addition be sentenced to be discharged with ignominy; (proviso (4)).



## 6. "Cashiering" is a more ignominious form of "dismissal."

Sentences of cashiering and dismissal do not take effect until promulgation, and such sentences have the effect of cashiering or dismissing the accused, not only from the Army, but also from any other service in which he may hold His Majesty's commission.

7. *Forfeiture in the prescribed manner of seniority of rank.* See R.P. 47.

Temporary rank in the case of an officer is a "rank" and not merely an appointment. The substantive rank is not merged in the temporary rank, and a court-martial can order loss of seniority in either, or in both of the ranks.

An officer sentenced to forfeit seniority of rank may also be sentenced to reprimand or severe reprimand; (proviso (3)).

8. *Stoppages.* See proviso (12) and s. 137 (2).

9. The expression "soldier" includes a warrant officer, but s. 182 contains certain modifications as regards warrant officers.

A warrant officer when tried by district court-martial may only be sentenced to the following punishments:—

To be reprimanded or severely reprimanded; or

To such forfeitures, fines and stoppages as are allowed by this Act (see s. 138);

and, either in addition to or in substitution for any of these punishments—

To be dismissed from the service; or

To be reduced to the bottom or any other place in the list of the rank which he holds; or

To be reduced to an inferior class of warrant officer (if any); or

To be reduced to a lower grade, or, if he was originally enlisted as a soldier but not otherwise, to the ranks.

When tried by other than a district court-martial, a warrant officer may be sentenced to any punishment which a district court-martial can award, and, either in addition to or in substitution for any such punishment, to any other punishment to which a soldier (including a N.C.O.) is liable under this section.

10. *Detention.* See Ch. III, para. 64, and Ch. V, para. 106. As to the execution of a sentence of detention, see ss. 63–67.

A soldier sentenced to three months' detention, or upwards, is liable in commutation thereof, either wholly or partly, to general service, and to transfer to any corps; s. 83 (7).

11. *Discharge with ignominy.* See also proviso (4). A discharge with ignominy takes effect, not from the date of sentence or promulgation, but from the date when discharge is formally carried out in accordance with the regulations relating to discharges.

12. *Forfeiture in the prescribed manner of seniority of rank.* See R.P. 47.

The power to forfeit seniority of rank in the case of N.C.Os. is intended to meet cases in which reduction to a lower grade would be too severe. As indicating the relative severity of a sentence of reduction and one of forfeiture of seniority, it is to be noted that a serjeant of twenty years' service who is sentenced to be reduced to the ranks loses all right to pension as a N.C.O., and is only entitled to pension as a private soldier, although he may have held the rank of serjeant for (say) twelve years. On the other hand, the effect of a sentence of forfeiture of seniority of rank is that his seniority in the rank he holds is alone affected. Thus, if a serjeant who was promoted to that rank on the 19th April, 1920, were sentenced to take rank and precedence as if his appointment to that rank bore date the 21st June, 1922, he would, on the latter date, while having only one day's service to count for seniority, still count continuous service for all other purposes in the rank of serjeant from the 19th April, 1920.

13. *Reduction.* Service in the lower grade will reckon from the date of signing the original sentence, whether the punishment in question was a revised sentence, or a mitigation by the confirming officer from a more severe sentence. As to the reduction of warrant officers, see note 9 above, and of warrant officers in the Indian forces, s. 180 (2) (f).

A court-martial does not deal with acting or lance rank; a sentence reducing a corporal (acting serjeant) to corporal or to lance-corporal is inoperative.

14. *Reprimand or severe reprimand.* (N.C.Os.)

Although lance or acting rank is not cognizable in the sentence of a court-martial, nevertheless a soldier holding any such appointment, being a N.C.O., may be sentenced by court-martial to be reprimanded or severely reprimanded. See notes 6 to s. 183.

## Part I.

15. *Forfeitures: i.e., those mentioned in provisos (6) and (11) of this section. Forfeitures of service towards discharge under ss. 79 (2), 84, and 161 are consequential and cannot be awarded by sentence of court-martial.*

s. 44. Except as regards good conduct badges (P.W. 964), there is at present no provision contained in any Royal Warrant providing for the forfeitures by sentence of court-martial of military decorations or military rewards as defined by s. 190 (18) and (19). No such forfeitures can therefore be ordered by a court-martial. (See P.W. 1147.) Neither can a court-martial deal with naval or air force decorations.

As to restoration of forfeited service, see the proviso to ss. 79 (2) and 161, and note 4 to s. 84.

16. *Fines.* These are not authorised to be imposed for any offence except drunkenness, and cannot exceed, if imposed by a court-martial, five pounds, or, if imposed by a C.O., two pounds; ss. 19, 46 (2) (b), and K.R. 579.

17. *Stoppages.* See proviso (12). S. 138 sets out the cases in which penal deductions or stoppages may be made from the ordinary pay of a soldier; and s. 139 provides for their remission.

18. *Subject to the other regulations of this Act, &c.* Provisos (2), (3), (4), (6), (11), and (12) specify the particular instances in which more than one punishment may be given.

19. By virtue of this proviso a man cannot be subjected to imprisonment or detention, whether under one or more sentences, for more than two consecutive years. (See also K.R. 653.) Any period passed in military custody under a sentence or in imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and one of detention (or *vice versa*), is to be reckoned as part of the term of confinement.

The proviso does not apply to a fresh offence committed after release.

A man whose sentence has expired is not in custody whilst returning to his unit, and if immediately after rejoining he commits an offence and is re-arrested, he may be sentenced by court-martial to two years' imprisonment or detention, for at no intervening period since the expiration of his previous sentence has he been undergoing any sentence.

Escape from prison or detention, even for a single day, breaks the continuity of the confinement, and time must be calculated afresh from the date on which the man is returned to prison, detention barrack, or military custody. If he is re-captured and kept in military custody to be tried for some fresh offence (e.g., his escape from imprisonment or detention) and his original sentence is still current, he is not merely "in arrest pending trial" but is actually serving his original term (see s. 63). Therefore at his trial a court-martial cannot award a full two years' imprisonment or detention, but must deduct therefrom the period spent in custody since his re-arrest.

See K.R. 561 (b) (iv) for provisions as to consecutive awards of detention by a C.O.; the same provisions are held to be applicable also to awards of field punishment (which is not expressly mentioned).

20. Care must be taken to comply with this provision; a sentence of penal servitude *and* to be cashiered is incorrect, as cashiering should *precede* penal servitude.

21. It will be observed that this does not apply in the case of a soldier sentenced to detention.

22. For definition of *active service*, see s. 189.

Whenever an accused was at the date of his offence on active service, this fact should always be stated in the charge-sheet so that the court may be in a position to give effect to provisos (5) and (6). Nevertheless, where the troops in the country where the court sits are all on active service, the court may take judicial notice of such fact though not expressly averred; cf. R.P. 12 (C).

23. The following conditions are essential to the legality of field punishment:—

The offender must be on active service.

The punishment must be in conformity with the Field Punishment Rules; see the Rules at p. 787.

24. Forfeiture of pay under this provision can only be ordered in case of an offence committed by a soldier on active service. If the soldier is at the time liable to any penal deductions from pay, the order only affects the balance of the pay remaining after those deductions: see s. 138, proviso (c).

25. As to these forfeitures, see P.W., 979, 1031, 1032, 1147, and note 15 above.

26. *Authorised by this Act.* See ss. 137 and 138.

27. One effect of this provision is to make it illegal for an officer prisoner of war placed by the captor State in charge of other prisoners to impose on them—even in compliance with express orders—any punishment not sanctioned by this Act. Part I.  
—  
ss. 44, 45.

## ARREST AND TRIAL.

*Arrest.*<sup>1</sup>

45. The following regulations shall be enacted with respect to persons subject to military law when charged<sup>2</sup> with offences punishable under this Act :— Custody of  
persons  
charged with  
offences.

- (1) Every person subject to military law when so charged<sup>2</sup> may be taken into military custody: Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report<sup>3</sup> of the necessity for further delay shall be made by his commanding officer<sup>4</sup> in manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody:
- (2) Military custody<sup>5</sup> means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement:
- (3) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service:
- (4) An officer or non-commissioned officer commanding a guard, or a provost marshal or assistant provost marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost marshal, or assistant provost marshal into whose custody the person is committed, an account in writing,<sup>6</sup> signed by himself, of the offence with which the person so committed is charged<sup>2</sup>:
- (5) The charge<sup>2</sup> made against every person taken into military custody shall without unnecessary delay be investigated<sup>7</sup> by the proper military authority,<sup>8</sup> and, as soon as may be, either proceedings shall be taken for punishing the offence, or such persons shall be discharged from custody<sup>9</sup>.

## NOTE.

1. See generally as to arrest and confinement, and release therefrom, Ch. IV, paras. 1-18; and K.R. 533-540.

Part I. It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

s. 45. An officer or N.C.O. who commits a person into custody should sign and deliver to the officer or N.C.O. into whose custody such person is committed, a written account (termed "the charge") of the offence with which the person so committed is charged. He should, if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made (K.R. 536), but non-delivery of the "charge" will not excuse a refusal to receive an offender into custody. The officer or N.C.O. into whose custody the accused is committed, must give in writing to the officer to whom he may be ordered to report the name and offence of the accused, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)); and, if so requested by the person committed, he shall inform such person of the rank and name of the person preferring charges against him or ordering his arrest, and shall also give him a copy of the charge report as soon as he himself receives it. The report mentioned must be made immediately upon relief from guard or duty, if relieved within 24 hours after the person's committal, and in any case within those 24 hours. It must be accompanied by the "charge," if he has received it; and should be made by an entry in the guard report, and he should send the "charge," or a copy thereof, to the C.O. of the accused (K.R. 536). If he has not received the "charge," he must mention the circumstance in his report, and if the "charge" is not delivered within 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the retention in custody of the accused is not forthcoming, will, at the expiration of 48 hours from the time of committal, order him to be released (K.R. 536). A C.O. who has received the report of the committal of an accused person becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under R.P. 2, is not to exceed 48 hours without the case being reported to the officer to whom application would be made to convene a court-martial for the trial of the person charged.

If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by s. 45 (1), as explained by R.P. 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be sent by the C.O., even though the fault of the delay lies with the officer to whom the report is to be made. This special report is not required on active service. If undue delay occurs in convening a general or district court-martial, a report has to be made in due accordance with R.P. 17 (C).

When an officer or warrant officer is placed under arrest, the C.O., unless he dismisses the charge, should report the case, without delay, to superior authority.

With reference to the above observations, it must be recollected that in reckoning the time fixed by the R.P., Sunday, Good Friday, and Christmas Day are, as a general rule, excluded (R.P. 135 (A)), but this is not the case in reckoning the days fixed by sections of the Act, e.g., ss. 21, 45 (1).

2. The "charge" referred to in this section, in s. 46 (1), and in R.P. 3, 4 and 8 is distinct from that referred to in R.P. 11 (B). The latter, in the case both of officers and soldiers, is the formal charge preferred by the C.O. and set out in the written charge-sheet, if and when it is decided to send the case for trial. The former is simply a complaint that an offence has been committed.

3. *Special report.* See R.P. 1.

4. The C.O. in this section means the C.O. as defined by R.P. 129; see K.R. 526.

5. *Military custody.* This expression is here restricted by the opening words of the section to the military custody of persons when charged with offences, and does not apply to persons in military custody undergoing sentence. See K.R. 533-540.

6. *An account in writing.* The absence of a written charge does not, however, invalidate an arrest. *Haddon v. Evans* (1919), 35 T.L.R. 642.

7. As to the conduct of the investigation, see Ch. IV, paras. 19-29; R.P. 2-8 and notes; K.R. 542-554.

8. *Proper military authority.* All charges against N.C.Os. and soldiers should be investigated in the first instance by the company, &c., commander,

who, in all cases where a private soldier is concerned, and in certain cases where a N.C.O. is concerned, may either dispose of the case himself or reserve it for the C.O. (see K.R. 542, 565); and, where the case is so reserved, the C.O. must give the decision under s. 46 (1). Part 1.  
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ss. 45, 46

9. As to offences in relation to this section, see s. 21.

### *Summary disposal of Charges.<sup>1</sup>*

46.—(1) The commanding officer<sup>1</sup> shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge,<sup>2</sup> if he in his discretion thinks that it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to court-martial, or, in the case of an officer below the rank of field officer or of a warrant officer,<sup>3</sup> may refer the case to be dealt with summarily by a general officer or brigadier under the provisions of this Act, or in the case of a soldier<sup>4</sup> may deal with the case summarily. Power of  
commanding  
officer,

(2) Where he deals with a case summarily,<sup>5</sup> he may—

- (a) Award to the offender detention<sup>6</sup> for any period not exceeding twenty-eight days; and
- (b) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding two pounds<sup>7</sup> either in addition to or without any other punishment; and
- (c) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay<sup>8</sup> authorised by this Act to be made by the commanding officer; and
- (d) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment<sup>9</sup> within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to, or without any other punishment, order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days<sup>10</sup>; and
- (e) In addition to or without any other punishment may award such other minor punishment<sup>11</sup> as he is for the time being authorised to award, so however that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded.

(3) Where the charge is against a soldier for drunkenness<sup>11</sup> the commanding officer shall deal with the case summarily unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness the offender was found unfit for duty, or unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months; but nothing in this subsection shall affect the jurisdiction of any court-martial or the right of the soldier to be tried by a district court-martial.  
[Certain words omitted from subsection 3 by 46 Vict. c. 6, s. 4.]

(4) [This subsection was repealed by A.A.A. 1910].

Part I. (5) [*This subsection was repealed by A. & A. F. (A.) Act, 1921.*]

s. 46. (6) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath,<sup>12</sup> and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7) An offender shall not be liable to be tried by court-martial where the charge has been dismissed or the offence has been dealt with summarily<sup>13</sup> by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial.<sup>14</sup>

(8) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, in every case where the award or finding involves a forfeiture of ordinary pay,<sup>15</sup> and in every other case, unless he awards no other punishment than one of the minor punishments referred to in this section, ask the soldier<sup>16</sup> charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and if the soldier elects to be tried by a district court-martial<sup>17</sup> the commanding officer shall take steps for bringing him to trial by a district court-martial, but otherwise shall proceed to deal with the case summarily<sup>18</sup>.

(9) The power of dealing summarily with a case may be delegated by a commanding officer to any officer under his command in accordance with and subject to the King's Regulations<sup>19</sup>:

Provided that such officer shall not have power to inflict any punishment other than a minor punishment, or such fines for drunkenness as may be provided for by those Regulations.

#### NOTE.

1. See Ch. IV, paras. 31-38; R.P. 2-7, and notes; K.R. 542-568. As to meaning of *commanding officer*, see R.P. 129 and note; K.R. 526.

2. A C.O. may dismiss the charge, whether the accused is an officer or a soldier; and he should do so if, in his opinion, the evidence does not show that some offence under this Act has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with. (R.P. 4 (A)).

3. A C.O. cannot, as such, inflict "punishment" upon an officer. Nor does his power under this section to deal summarily with a soldier extend to a warrant officer (s. 182 (1)), or to a civilian who is subject to the Act (s. 184 (2)). See s. 47 with regard to summary disposal of charges against officers and warrant officers.

4. *In the case of a soldier.* "Soldier" includes a N.C.O., whether permanent or acting, but the K.R. restrict the powers of a C.O. in dealing with N.C.Os. (K.R. 558, 559), who are only subject to the following summary and minor punishments:—

Any deduction from ordinary pay allowed by s. 138 (4), subject to the right of the N.C.O. to elect trial by court-martial;

Reprimand or severe reprimand; } No right to elect trial by court-martial.  
Admonition; }

A N.C.O. holding any appointment or acting rank or lance rank may be ordered by his C.O., either for an offence or otherwise, to revert to his permanent rank or to any intermediate acting or lance rank, the N.C.O. having no right to elect trial by court-martial; (s. 183 (c); K.R. 559; and see note 15 below.)

By s. 183 (1), the obligation (under subs. (3) of this section) to deal summarily with certain cases of drunkenness does not apply to a N.C.O. charged with drunkenness.

If a N.C.O. is reduced to the ranks by sentence of court-martial, and whilst serving in the ranks is awarded a summary or minor punishment by his C.O., such award is valid although at a later date the proceedings of the court-martial are quashed.

5. The summary and minor punishments which a C.O. can award in the case of a private soldier are set out in K.R. 560. Briefly they are as follows:—

**Summary punishments** (subject to the soldier's right to elect, previous to the award, to be tried by court-martial)—

*Detention*.—Up to 28 days; but if the C.O. is below the rank of field officer, then, except in cases of absence without leave, only up to 7 days;

*Fine*.—For drunkenness only, and not exceeding two pounds. For the prescribed scale of fines, see K.R. 579;

*Deductions from pay*.—As authorised by s. 138 (4) (6), (subject to approval of G.O.C. if amount of proposed deduction exceeds four pounds);

*Field punishment*.—Up to 28 days (on active service only);

*Forfeiture of pay*.—Up to 28 days (on active service only).

Minor punishments (the soldier having no right to elect trial by court-martial)—

*Confinement to barracks*.—Up to 14 days;

*Extra guards and piquets*.—Only to be ordered as a punishment for minor offences or irregularities when on, or parading for, these duties;

*Admonition*.

K.R. 561 lays down when more than one of the above punishments may be awarded.

6. Detention awarded by a C.O. up to 7 days will be awarded in "hours"; K.R. 561 (b) (ii). As to commencement of term of detention, see R.P. 6, and K.R. 561 (b) (iv). A C.O. cannot by one or more sentences award detention for more than 28 consecutive days (K.R. 561 (b) (iv)). A C.O. cannot inflict a sentence of imprisonment.

7. For scale of fines for drunkenness, mode of recovery, &c., see K.R. 579, 580, and as to punishment for simple drunkenness, K.R. 577.

8. *Deduction from ordinary pay*. See ss. 138–140 and notes.

9. Field punishment is awarded in "days," never in "hours."

Forfeiture of pay commences as from the day of award. When, therefore, it is desired to order forfeiture of pay for a period in excess of the field punishment awarded, e.g., 10 days' field punishment and an additional forfeiture of 14 days' ordinary pay, it will be necessary to award the offender 10 days' field punishment with forfeiture of 24 days' pay, as pay is forfeited for the period of field punishment awarded.

A C.O. cannot by one or more sentences award more than 28 days' consecutive forfeiture of pay or field punishment; but this does not prevent him awarding such sentences as 28 days' forfeiture to a man who has just undergone 14 days' detention or field punishment, or 28 days' detention or field punishment to one who has just undergone 14 days' forfeiture; in such cases it is the Royal Warrant which in effect causes the period of forfeiture to exceed 28 days.

10. *Minor punishment*. See K.R. 558 (b), 560 (b), and notes 4 and 5 to this section.

11. Certain cases of drunkenness a C.O. must deal with summarily (unless the accused elects trial under subs. (8) of this section), except where the offender is a N.C.O. (s. 183 (1)); but he may, if he thinks fit (subject to such election), deal summarily with any case of drunkenness, though the offence was committed in the special circumstances mentioned in this sub-section. See K.R. 575.

12. Every charge must be heard in the presence of the accused. Witnesses will not be sworn unless he requires it, but he must have full liberty of cross-examination, to call witnesses and make any statement (R.P. 3, 4).

13. *Dealt with summarily*. If a C.O., contrary to K.R. 547 (which requires aim to refer to superior authority certain offences), through inadvertence and with a full knowledge of the facts, dismisses the charge or deals with any offence summarily, his award is legal and the offender cannot be tried by court-martial for that offence.

14. *Acquitted or convicted by a civil court or a court-martial*. See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted, or the charge has been dismissed,

**Part I.** or where he has been convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his C.O. or tried for such other offence. If, for example, he has been acquitted, or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot afterwards be tried for desertion. Nor can a man convicted by a court-martial of an offence be afterwards sentenced by his C.O. to stoppages for damage caused by that offence.

ss. 46, 47.

15. Lance and acting rank is a matter to be dealt with entirely by a C.O., hence a C.O. can deprive a soldier of acting or lance rank and revert him to his permanent rank without giving him the option of trial by district court-martial, even though such deprivation will involve a lower rate of pay. See also Ch. IV, para. 26, and note 6 to s. 183.

Where a case of absence without leave is dealt with summarily by a company, &c., commander acting as commanding officer, he must, of course, comply with the provisions of this sub-section, and should in every case, before awarding any punishment, inform the soldier of the number of days pay he forfeits under the P. W. in respect of his absence, and ask him whether he wishes to be tried by district court-martial.

16. If the C.O. omits to ask the soldier the question prescribed by this sub-section, the soldier can claim his right of trial by court-martial at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence: (R.P. 7); and a soldier is to be given on the following day an opportunity of reconsidering his decision to be tried by court-martial: K.R. 552 (b). Where a soldier elects to be tried, he may, if his C.O. thinks the circumstances of the case warrant it, be at once released from arrest pending trial: K.R. 552 (a).

17. Where an accused elects trial by court-martial, the fact should be noted (in red ink) on the top of the application form and of the charge-sheet. This serves (*inter alia*) to notify the court that the C.O. did not consider the case to be one deserving of a more severe punishment than he himself could have awarded. (*cf.* K.R. 652 (c).)

18. The officer commanding a military hospital is temporarily the commanding officer of patients therein, and can investigate charges against them and apply for a court-martial. See also K.R. 1350.

R.P. 8 (B) prohibits a C.O. from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as other punishments. But a C.O. can at any time before the punishment has been completed, mitigate or remit a minor or a summary punishment. As to entry of his award, see K.R. 544.

Awards by a C.O. which appear to be illegal or excessive can be reviewed by superior authority under R.P. 10.

19. See K.R. 542 (d), 565.

Power to deal summarily with charges against officers and warrant officers.

47.—(1) Any of the following authorities shall have power to deal summarily<sup>1</sup> with a charge against an officer below the rank of field officer or against a warrant officer referred for that purpose, or for trial by court-martial,<sup>2</sup> under the foregoing section of this Act, that is to say, any general officer or brigadier authorised to convene a general court-martial, and any officer (not under the rank of major-general) appointed for the purpose by the Army Council, and also in the case of a force on service beyond the seas the general or air officer commanding the force and any officer (not under the rank of major-general) appointed for the purpose by him.

(2) The authority having power to deal summarily with the case may, with or without hearing the evidence, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with, or, where he thinks the charge ought to be proceeded with, take steps for bringing the offender to a court-martial, or may, after hearing the evidence, or, if the accused consents thereto in writing, after reading a summary or abstract of the evidence, deal with the



case summarily by awarding in the case of an officer<sup>3</sup> one or more of the following punishments<sup>4</sup>:— Part I.

(a) Forfeiture of seniority of rank<sup>5</sup> either in the army or in the corps to which the offender belongs, or in both, or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion ; s. 47.

(b) Severe reprimand or reprimand ;

and in the case of a warrant officer<sup>2</sup> one or more of the following punishments—

(a) Forfeiture in the prescribed manner of seniority of rank ;<sup>6</sup>

(b) Severe reprimand or reprimand ;

(c) Any deduction authorised by this Act to be made from his ordinary pay.

(3) Where the authority having power to deal summarily with the case considers that he may so deal with the case, he shall, unless he awards a severe reprimand, or a reprimand, in every case ask the accused whether he desires to be dealt with summarily or to be tried by a court-martial, and if the accused elects to be tried by a court-martial, take steps for bringing him to trial by a court-martial, but otherwise shall proceed to deal with the case summarily.

(4) In every case where an authority has power to dispose of a case summarily, and decides so to do, the accused may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(5) An offender shall not be liable to be tried by court-martial where the charge has been dismissed or the offence has been dealt with summarily under this section, and shall not be liable to be punished by a general officer or brigadier under this section for any offence of which he has been acquitted or convicted by a competent civil court or by a court-martial.

#### NOTE.

1. This section obviates the necessity for trying by court-martial a junior officer or a warrant officer who commits some offence which is not of a serious nature but yet cannot be overlooked. (See K.R. 546 as to the offences with which the authorities specified in this section may deal.) Where an officer or a warrant officer is ordered to be summarily dealt with under this section, he should be given a copy of the summary (or abstract) of the evidence not less than twenty-four hours before the trial. R.P. 9 (A).

2. An authority can act under this section not only if asked to do so but also if the case has been remanded for the purpose of the trial of the offender by court-martial. Even if asked to deal summarily with the case, he can, if he thinks it desirable, convene a court-martial. If on perusal of the summary (or abstract) of evidence and other documents he thinks fit, he can at once, without bringing the accused before him, either dismiss the case or order a court-martial, or he can decide to hear the evidence with a view to dealing summarily with the case. The accused may demand that the evidence be given on oath. After hearing the evidence the authority herein specified can still dismiss the case or order a court-martial, or he can deal summarily with it subject to the right of the accused to claim trial by court-martial under subs. (3).

3. When an officer or warrant officer of the Royal Air Force seconded, lent or attached to the Army is summarily dealt with under this section, the

Part I. discretion of the authority so dealing with the case is regulated by K.R. 557, and he will not, in the case of an officer, award the punishment of forfeiture of seniority of rank in the Royal Air Force, or of service for promotion in that force; nor, in the case of a warrant officer, forfeiture of seniority of rank in the said force.

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4. Awards under this section which appear to be illegal or excessive can be reviewed by the authorities specified in R.P. 10.

5. *Forfeiture of seniority of rank—(officers).* See R.P. 47. See also K.R. 555 and 556, which limit the power of an authority acting under this section.

6. *Forfeiture in the prescribed manner of seniority of rank—(warrant officers).* See R.P. 47.

### *Courts-Martial.*

#### PRELIMINARY NOTE.

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss. 48-56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122-130) and as to evidence (ss. 163-165) and in the Rules of Procedure. S. 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries beyond the seas, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157-162.

See Ch. V for general explanation of the constitution and practice of courts-martial; and for details see the Rules of Procedure and notes.

K.R. 546 specifies the offences which an authority under s. 47 may dispose of, and K.R. 547 specifies the offences which a C.O. is empowered to dispose of without reference to superior authority; K.R. 615 and 634 point out the general rules under which different classes of offences should be dealt with by a lower or higher tribunal.

General and  
distr. ct  
courts-  
martial.

48. The following rules are enacted with respect to general courts-martial and district courts-martial:—

- (1) A general court-martial shall be convened by His Majesty or some officer deriving authority to convene a general court-martial immediately or mediately from His Majesty<sup>1</sup>:
- (2) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial<sup>2</sup>:
- (3) A general court-martial shall consist of<sup>3</sup> not less than five officers, each of whom must have held a commission during not less than three whole years,<sup>4</sup> and of whom not less than four must be of a rank not below that of captain:
- (4) A district court-martial shall consist of<sup>3</sup> not less than three officers, each of whom must have held a commission during not less than two whole years<sup>4</sup>:
- (5) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum<sup>5</sup> for that court-martial:
- (6) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid,

any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished<sup>6</sup> by either a general or district court-martial :

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- (7) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer :
- (8) Sentence of death<sup>7</sup> shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried :
- (9) The president<sup>8</sup> of a court-martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed<sup>9</sup> in the order convening the court and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial, and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed<sup>9</sup> in the order convening the court and to be conclusive, a captain is not, having due regard to the public service, available.
- (10) If it becomes necessary to convene a court-martial under this Act at any place where in the opinion of the convening officer the necessary number of military officers is not available to form such a court, or where in his opinion such a necessary number could not be made available without serious injury to the interests of the service, such opinion to be expressed<sup>9</sup> in the order convening the court, and to be conclusive, then the said convening officer may, subject to any directions which may be given by the Army Council and with the consent of the proper air force authority, nominate any air force officer to preside over the court, or nominate as members of the court any necessary number of air force officers in addition to or in lieu of military officers :

Provided that no air force officer shall be qualified to perform any function in relation to such court-martial unless he is of equal seniority and equivalent rank to that which would have been required by the provisions of this Act if he had been a military officer.

## NOTE.

1. Power to convene general courts-martial is given by warrant; see s. 122, and Ch. V, paras. 5-9.

2. The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial; in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene, district courts-martial (s. 123). As to the duty of an officer before convening a court, and as to speedy convening of court, see Ch. V, paras. 20-22. and R.P. 17.

Part I. 3. As to the composition, &c., of courts-martial, see R.P. 19, 20 and 21, and K.R. 642-644.

ss. 48, 49. Air-force officers properly attached or lent to, or seconded for service with, the Army, can sit on a court-martial; so also can an army chaplain if holding a commission, but he is not qualified to preside.

4. A court would have no jurisdiction if each member has not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order.

5. A convening officer can increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below that minimum; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

6. In the case of a warrant officer, a district court-martial can only award the punishments specified in s. 182 (2) (a).

7. As to the duty to notify to an accused that sentence of death has been passed, see note (b), R.P., App. II, p. 762.

8. As regards the appointment of president and members, see K.R. 644. The convening officer cannot himself preside or, indeed, be a member of the court (s. 50 (2)). The duties of the president are laid down in R.P. 59; he must be appointed by name. As regards the members and waiting members, the number and ranks and units to which they belong may alone be mentioned, or they may be mentioned by name, and in cases where units cannot be specified (e.g. R.E., R.A.S.C.), they should be named.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of a commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused. K.R. 642.

Where the accused is a warrant officer, the president must not, in any case, be under the rank of captain; s. 182 (4).

9. *Such opinion to be expressed, &c.* If the opinion is not duly expressed, the court will be improperly constituted, and its proceedings invalid.

Field general  
courts-  
martial;

49.—(1) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,

then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial,<sup>1</sup> for the trial of the person charged with such offence, provided as follows:—

(a) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person, unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed:

(b) A field general court-martial shall consist of not less than three officers, unless the officer convening the same is of opinion that three officers are not available having due regard to the public service, in which case the court-martial may consist of two officers:

(c) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president,

who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain :

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ss. 49, 50.

(d) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Act, or imprisonment.

(2) Section forty-eight of this Act except paragraph (10) thereof shall not apply to a field general court-martial, but sentence of death<sup>a</sup> shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

(3) A field general court-martial may, notwithstanding the restrictions enacted by this Act<sup>b</sup> in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer, and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence. Provided always, that no sentence of any such court-martial shall be executed until confirmed<sup>c</sup> as provided by this Act.

#### NOTE.

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court-martial. A field general court-martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country. See R.P. 105-123 and notes.

If troops on board a ship (not commissioned by His Majesty) are on active service, the O.C. troops can convene a field general court-martial for trial of an offender on board; (see also as to such troops s. 188).

2. As to notifying accused that a sentence of death has been passed, see note (b), R.P. App. II, p. 762.

3. Restrictions enacted by this Act. See s. 41 proviso (a).

4. As to confirmation of sentence, see s. 54 (1) (d), and R.P. 120.

50.—(1) The officers sitting on a court-martial may belong to the same or different corps,<sup>1</sup> or may be unattached to any corps, and may try persons belonging or attached to any corps.

Court-martial in general.

(2) The officer who convened a court-martial shall not, save as is otherwise expressly provided<sup>2</sup> by this Act, sit on that court-martial.

(3) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any accused, or the commanding officer<sup>3</sup> of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges<sup>4</sup> on which an accused is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such accused, nor shall he act as judge advocate at such court-martial.<sup>5</sup>

#### NOTE.

1. If an officer is competent to sit on a court-martial, he is qualified to sit on any court of the same description, and a convening officer may, by arrangement, avail himself of the services of an officer not otherwise under his orders.

**Part I.** See note 1 to R.P. 20. A general or district court-martial must, so far as seems to the convening officer practicable, be composed of officers of different corps, R.P. 20 (A) ; and see as to the trial of a member of the auxiliary forces, ss. 50, 51, R.P. 20 (B). The definition of corps in s. 190 (15) includes the Royal Marines.

2. *Save as otherwise expressly provided.* See s. 49 (1) (c), which enables the convening officer of a field general court-martial, to preside, if it is impracticable to appoint another officer.

3. *Commanding officer.* This includes any officer who has been the commanding officer of the accused, within the meaning of s. 46 and R.P. 129, at any time between the date on which the charge against the offender is made and the date of trial inclusive, irrespective of the fact that he did not deal with the case in question.

4. *Investigated the charges.* The officer who investigated is usually the C.O. of the accused; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially. R.P. 19 (B) (iii), however, adds to the list of disqualified officers the officer who took down the summary of evidence, the company, &c., commander who conducted the preliminary inquiry, any member of a court of inquiry which may have dealt with the case, and any member of a previous court-martial which tried the accused in respect of the same offence.

Special attention is drawn to R.P. 19 (B) (iii), and to the note on p. 742, relating to the action to be taken in order to prevent officers who have served upon courts of inquiry, regarding the offence about to be tried, from sitting on courts-martial for the trial of the offence.

5. A member of the court or a judge-advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by R.P. 106 (D) for serving if he is provost marshal, assistant provost marshal, or prosecutor, or a witness for the prosecution.

Challenges  
by accused.

51.—(1) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president<sup>1</sup>, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection.<sup>2</sup>

(2) Every objection made by an accused to any officers shall be submitted to the other officers appointed to form the court.

(3) If the objection is to the president,<sup>1</sup> such objection, if allowed by one third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object.

(5) If the objection is to a member other than the president and is allowed by one half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like

question shall be repeated in respect of any officer appointed to Part I. serve in lieu of a retiring officer.

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ss. 51, 52

NOTE.

1. This section gives the accused an absolute right to a new president, if his challenge to the president is allowed by one-third of the officers appointed to form the court. A challenge to the president must be dealt with first; see R.P. 25 (B).

2. As to challenges generally, see R.P. 25 and note; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, R.P. 18; and as to challenges where a court is being sworn to try several persons, R.P. 71 (A) (B).

52.—(1) An oath in the prescribed form<sup>1</sup> shall be administered by the prescribed person<sup>2</sup> to every member of every court-martial<sup>3</sup> before the commencement of the trial. Adminis-  
tration of  
oaths.

(2) An oath in the prescribed form or forms<sup>4</sup> shall be administered by the prescribed person<sup>5</sup> to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any), and also to every shorthand writer or interpreter (if any) in attendance on the court-martial.<sup>6</sup>

(3) Every witness before a court-martial<sup>3</sup> shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.<sup>6</sup>

(4) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection, or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form,<sup>7</sup> and for the purposes of this Act such solemn declaration shall be deemed to be an oath.<sup>8</sup>

NOTE.

1. *Prescribed form.* See R.P. 26 (A) and App. II, pp. 762-3.

The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to administer justice duly; as well as to keep secret the votes of members, and (until confirmed or except as permitted by instructions of the Army Council) the sentence of the court.

The oath taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial.

2. *Prescribed person.* See R.P. 26 (B).

3. As to swearing of members, witnesses, &c., in the case of a field general court-martial, see R.P. 111.

4. *Prescribed form or forms.* See R.P. 27 and App. II, pp. 762-3.

5. *Prescribed person.* See R.P. 27.

6. The form of oath for a witness is set out in R.P., App. II, p. 768; and the person to administer it is prescribed by R.P. 82.

7. The form of solemn declaration is set out in R.P., App. II, p. 763; and the person before whom such declaration may be made is prescribed by R.P. 28.

- Part I.** 8. The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.
- ss. 52, 53.** For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126 (2).

**Procedure.** 53.—(1) If a court-martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2) If after the commencement of the trial the president dies or is otherwise unable to attend,<sup>1</sup> and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3) If, on account of the illness of the accused<sup>2</sup> before the finding, it is impossible to continue<sup>3</sup> the trial, a court-martial shall be dissolved.

(4) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried again.<sup>4</sup>

(5) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared<sup>5</sup> of all other persons.

(6) The court may adjourn<sup>6</sup> from time to time.

(7) The court may also, where necessary, view<sup>7</sup> any place.

(8) In the case of an equality of votes on the finding the accused shall be deemed to be acquitted.<sup>8</sup> In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9) When a court-martial recommend a person under sentence to mercy, such recommendation shall be attached to and form part<sup>9</sup> of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and sentence.

#### NOTE.

1. *Unable to attend.* The court cannot proceed at all without a president; and in the event of his absence must adjourn until he can attend, or until a new president is appointed by the convening authority: see R.P. 65 (B).

2. *Illness of the accused.* A medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

3. *Impossible to continue.* This means to continue within a reasonable time having regard to all the circumstances.

4. It may frequently be inexpedient to convene a fresh court for a retrial under this provision, especially where the accused has been for some time under arrest or in confinement.

5. *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation: see R.P. 63.

6. *Adjourn.* See as to adjournment, R.P. 65.

7. *View.* The convening officer cannot depute a selection of members to view a place, as the view must be in open court (R.P. 63 (B)), *i.e.*, in the presence of all the members, the prosecutor, and the accused.



8. *Acquitted.* In such a case the acquittal must be pronounced at once in open court, and if it relates to all the charges the accused must be released; s. 54 (3). Part I.

9. As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding; see R.P. 49. ss. 53, 54.

Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the person under sentence, for instance, where the charge was for striking a superior, and the court stated their opinion that the accused "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

As to the exceptional character of recommendations to mercy see Ch. V, para. 84.

54.—(1) The following authorities shall have power to confirm<sup>1</sup> the findings and sentences of courts-martial; that is to say, Confirmation,  
revision, and  
approval of  
sentences.

- (a) [*This paragraph was repealed by A. & A.F. (A) Act, 1920.*]
- (b) In the case of a general court-martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from His Majesty:
- (c) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial:
- (d) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part, or, where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorised to confirm the findings and sentences of the field general court-martial awarding the sentence. Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect, unless of until it has been confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of his sentence.

(2) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision<sup>1</sup> once, but not more than once,<sup>2</sup> and it shall not be lawful for the court on any revision to receive any additional evidence; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also.<sup>3</sup> In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on the revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.<sup>4</sup>

(3) The finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation<sup>5</sup> or be subject to be revised, and shall be pronounced at once in open court, and if it relates to the whole of the offences the accused shall be discharged.

**Part I.** (4) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where s. 54. a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority; and where a court-martial is held in a colony,<sup>6</sup> and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned. Provided that where a member of a field general court-martial trying an accused would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(5) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence or the part not confirmed to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purposes of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed<sup>7</sup> by an authority authorised to confirm the same.

(7) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service,<sup>8</sup> be carried into effect, unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8) Sentence of death when passed in India<sup>9</sup> in respect of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect, unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General.

(9) When a person subject to military law is convicted of manslaughter, or rape, or any other civil offence<sup>10</sup> under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India<sup>9</sup> by the Governor-General, or, if he has been tried in a colony,<sup>6</sup> by the governor of the colony.

#### NOTE.

1. For details as regards officers empowered to confirm courts-martial and those to whom the power may be delegated, see ss. 122, 123, and notes.

As to confirmation and revision generally, see Ch. V, paras. 87-88, and as to field general courts-martial, R.P. 120 and note. Confirmation is complete

when the proceedings are promulgated. At any time before promulgation the confirming authority may cancel his minute of confirmation and order a revision.

Part I.

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

ss. 54-56.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls. Where a new sentence is not passed, the accused is not legally under any sentence. If a sentence only is sent back for revision, and (contrary to subs. (2)) additional evidence is received, the revised sentence is illegal, though the finding will stand.

4. The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting the accused on any charge or charges or mitigating the sentence, inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See R.P. 51 and note.

Where an accused is arraigned upon two alternative charges and is found guilty upon one of them, a finding of "not guilty" must be entered upon the other, and such a finding should be formally entered at once. (See, however, R.P. 35 (C).) Even if it is not so entered, the accused cannot be convicted upon that charge on a revision, though the finding of guilty on the first charge has not been confirmed. As a court on revision cannot increase the sentence, they cannot, as a rule, substitute two punishments for one: (*cf.* note 6 to s. 57).

A confirming officer cannot substitute a special finding on any charge for the court's finding; he can only confirm, send back for revision, or refuse to confirm the finding. (See R.P. 54 (C) and 55 as to confirmation of invalid or informally expressed sentences.)

5. The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. As to comments by the confirming officer in the case of an acquittal, see R.P. 51 (A) and K.R. 662 and 664.

6. *Colony*. See the definition in s. 190 (23).

7. The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also R.P. 120 (A) and Ch. V, para. 87); consequently there is no conviction, and the accused has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the conduct book. See s. 157 and note, and R.P. 55 and 56.

Confirmation of the sentence alone implies confirmation of the finding also; but is not the correct mode of recording confirmation.

It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of ss. 48, 50, 51, or 52 relating to jurisdiction have been contravened.

Where evidence of a nature prejudicial to the accused has been wrongfully admitted.

Where the accused has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could have legally convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law, even when the accused has pleaded guilty.

Where there has been such a deviation from the Rules of Procedure that injustice has been done to the accused.

8. *Active service*. See the definition in s. 189.

9. *India*. See the definition in s. 190 (21).

10. *Civil offence*. See s. 41.

55.—[Section 55 was repealed by A.A.A. 1893.]

56<sup>1</sup>.—(1) An accused charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

Conviction of less offence permissible on charge of greater.

**Part I.** (2) An accused charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

**s. 56.**

(3) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4) An accused charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(4A) An accused charged before a court-martial with striking may be found guilty of using or offering violence.

(4B) An accused charged before a court-martial with using violence may be found guilty of offering violence.

(4C) An accused charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) An accused charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.<sup>1</sup>

(6) Where an accused is charged before a court-martial with a civil offence and the charge is one upon which, if he had been tried by a civil court he might have been found guilty of any other offence, the court-martial shall have power to find him guilty of that offence.<sup>2</sup>

#### Notes.

1. Alternative charges should not be preferred in the cases provided for in subs. (1) to (4C) of this section, but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see note 6 to R.P. 35). See R.P., App. I, note as to use of Forms of Charges (6), p. 699.

Except in the cases specified in this section a court has no power to find a person guilty of any offence other than that with which he is charged in the statement of the offence (see notes to R.P. 13). A court, however, may (as allowed by R.P. 44 (E)) find a person guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

2. E.g., a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; or a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a man charged with wilfully allowing the escape of a person in custody may be found guilty of allowing his escape without reasonable excuse. The converse, of course, is not allowed; that is to say, a person charged with an offence cannot be convicted of a greater offence of the same class.

3. Some examples of charges for civil offences upon which an accused person, if tried by a civil court, could be found guilty of certain other offences, are set out below. For other examples see Table of Offences at end of Ch. VII.

Murder.....manslaughter.

Assault occasioning actual bodily harm.....common assault.

Burglary.....larceny in dwelling house to the value of £5, or house-breaking.

Indecent assault.....common assault.

Robbery with violence.....robbery, assault with intent to rob, larceny.

Wounding with intent to murder.....unlawful wounding.

Unlawful wounding.....common assault.

Any felony or misdemeanour.....attempt to commit same.

## EXECUTION OF SENTENCE.

## Part I.

*Commutation, Remission and Suspension of Sentences.*

s. 57.

57.—(1) The confirming authority<sup>1</sup> may, when confirming<sup>2</sup> the sentence of any court-martial, mitigate<sup>3</sup> or remit<sup>4</sup> the punishment thereby awarded, or commute<sup>5</sup> such punishment for any less punishment or punishments<sup>6</sup> to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned, or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.<sup>7</sup>

Commutation and remission of sentences.

(2) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate<sup>3</sup> or remit<sup>4</sup> the punishment thereby awarded, or to commute<sup>5</sup> such punishment for any less punishment or punishments<sup>6</sup> to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned; that is to say,

- (a) As respects offenders in whatever place they may for the time being be, His Majesty or the Army Council or the officer commanding the district or station where the offender may for the time be, or any prescribed officer<sup>8</sup>; and
- (b) As respects offenders who are for the time being in India<sup>9</sup>, the Commander-in-Chief of the forces in India or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint; and
- (c) As respects offenders who are for the time being in any colony<sup>9</sup> the officer commanding the forces in that colony; and
- (d) As respects offenders who are for the time being in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place.

(3) Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior military authority to exercise such power.

(4) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

(5) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment, or detention shall

Part I. apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation.  
—  
s. 57.

#### NOTE.

1. See Ch. V, paras. 88-93; as to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see R.P. 54 (A). See also as to duty of confirming officer, K.R. 659-666; and as to review of sentences in execution, see Part II of "Instructions regarding Suspension and Review of Sentences awarded by Courts-Martial" on pp. 801-3.

2. The powers conferred by this section may be exercised by the confirming authority, as such, under subs. (1), only when confirming the sentence. After promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised in the manner prescribed in the later parts of the section.

3. *Mitigation* is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

4. *Remission* may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As to notification of remission of imprisonment or detention, see K.R. 704.

The confirming authority cannot remit such forfeitures of pay as follow automatically (under the P.W.) upon the *finding* of the court.

5. *Commutation* is changing the description of punishment by awarding a punishment lower in the scale of punishments in s. 44, as imprisonment in lieu of penal servitude, or dismissal in lieu of cashiering, or detention in lieu of imprisonment; but the effect of s. 44 (1A) is that imprisonment can only be commuted to an equal or shorter term of detention, e.g., the commutation of six months' imprisonment to seven months' detention would be illegal.

The confirming authority as such cannot commute a punishment into general service; s. 83 (7) and note.

6. The earlier part of the section allows an authority to commute a punishment "for any less punishment or punishments" to which the offender might have been sentenced; the later parts of the section omit the words "or punishments" but those words have been held to be implied in the words "such less punishment." There is no standard of comparison between one punishment and two or more punishments, and as it is necessary that the commuted sentence should be less than the original sentence, the validity of the commutation of one punishment to two or more punishments is liable to be questioned on that ground. It is illegal to commute part of a punishment by substituting another punishment. Thus, where a court passed a sentence of detention but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the detention cannot be commuted to stoppages.

The penal servitude, imprisonment, or detention, under commutation, must commence on the date of the original sentence, even though that sentence was not one of penal servitude, imprisonment, or detention, as the case may be.

If a confirming authority purports (by way of commutation) to substitute for a valid sentence a sentence which the court had no power to award, neither the original sentence—since it has been commuted—nor the new sentence—since it is illegal—can stand. The conviction, however, remains good.

Where a term of imprisonment, detention, or field punishment is reduced in length by mitigation or remission, automatic forfeiture of pay under s. 138 and Royal Warrant is governed by the term actually undergone—not by that originally imposed. So, too, pay is not automatically forfeited whilst a sentence is "suspended."

7. Suspension of the execution of a sentence can only take effect after confirmation. A suspension under this section does not postpone the commencement of any term of penal servitude, imprisonment or detention: but see further as to suspension of sentences, s. 57A. See also Ch. V., paragraph 97.

8. *Prescribed officer.* See R.P. 126 (B).

9. For definitions of *India* and *colony*, see s. 180 (21) and (23).

57A.<sup>1</sup>—(1) Where a soldier is sentenced to penal servitude, imprisonment or detention,<sup>2</sup> the confirming authority to whom the sentence is submitted for confirmation may, when confirming the sentence, direct that the soldier be not committed to prison or detention barracks until the orders of a superior military authority have been obtained.

—  
s. 57A.

Power to  
suspend  
sentences.

(2) A superior military authority may in the case of any soldier so sentenced—

- (a) direct that a committal to prison or detention barracks shall not be issued until his orders have been obtained ;
- (b) suspend the sentence<sup>3</sup> whether or not the soldier has already been committed to prison or detention barracks.

(3) Where a sentence of penal servitude, imprisonment or detention is suspended under this section before the soldier has been committed to prison or detention barracks, the soldier if in custody shall be released, and, notwithstanding anything in this Act, the sentence shall not begin to run until the soldier is ordered to be committed to prison or detention barracks under that sentence.

(4) Where a sentence of penal servitude, imprisonment or detention is suspended under this section after the soldier has been committed to prison or detention barracks, he shall be discharged and the currency of the sentence shall be suspended from the day on which he is released until he is again ordered to be committed to prison or detention barracks under the same sentence.

(5) Where a sentence has been suspended under this section, the case may at any time, and shall, at intervals of not more than three months, be reconsidered<sup>4</sup> by a competent military authority, and, if on any such reconsideration it appears to the competent military authority that the conduct of the soldier since his conviction has been such as to justify a remission<sup>5</sup> of the sentence, he shall remit it.<sup>5</sup>

(6) A superior military authority may, at any time whilst a sentence is suspended under this section, order that the soldier be committed<sup>6</sup> to prison or detention barracks, and from the date of such order<sup>6</sup> the sentence shall cease to be suspended.

(7) Where a soldier whilst a sentence on him is so suspended is sentenced to penal servitude, imprisonment or detention for a fresh offence, a superior military authority may direct that the two sentences shall either run concurrently or consecutively, so, however, that the aggregate term of imprisonment or detention served under two or more sentences of imprisonment or detention shall not exceed two consecutive years ; provided that, where the sentence for such fresh offence is a sentence of penal servitude, then, whether or not that sentence is suspended, any previous sentence of imprisonment or detention which has been suspended shall be avoided.

(8) The powers conferred by this section shall be in addition to and not in derogation of any other powers as to the mitigation, remission, commutation, or suspension of sentences conferred by

- Part I. this Act, and a superior military authority under this section shall be an authority having power to mitigate, remit, or commute
- ss. sentences of penal servitude, imprisonment or detention under
- 57A, 58. subsection (2) of section fifty-seven of this Act.

(9) In this section—

The expression "superior military authority" means the Army Council and any general or air officer or brigadier whom the Army Council may appoint for the purpose, or the officer (whether military or air force) in chief command of any force employed on active service beyond the seas, and any general officer or brigadier whom he may appoint for that purpose;

The expression "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority.

#### NOTE.

1. This section makes permanent and extends the provisions introduced by the Army (Suspension of Sentences) Acts, 1915 and 1916, and the Naval, Military and Air Force Service Act, 1919, s. 2 (3)—now repealed. It only applies to sentences of penal servitude, imprisonment or detention; other sentences can be dealt with under s. 57. As to the principles and practice to be followed in dealing with sentences under this section, see "Instructions regarding Suspension and Review of Sentences awarded by Courts-Martial" on p. 795, *et seq.*

2. A N.C.O. sentenced by court-martial to penal servitude, imprisonment or detention is *ipso facto* reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a soldier receiving promotion or an appointment whilst under a suspended sentence.

3. An order for remission of sentence or committal to prison must be signed by the officer responsible for it; a minute of suspension may be signed by a staff officer "for" him, so long as it makes clear that the responsible officer himself considered the case and arrived at the decision.

4. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

5. The section does not contemplate the partial remission of a sentence; the only power of remission under subs. (5) is to remit the whole. Partial remission must be effected (if at all) under s. 57.

6. When a soldier under suspended sentence is committed to prison, &c., the sentence begins to run from the date of the order committing him, and not from the date of his reception into prison, &c.

7. The officers appointed to be superior military authorities under the section are notified from time to time in Army Orders. (See A.O. 121 of 1928.)

#### Penal Servitude.

Effect of  
sentence of  
penal  
servitude.

58. Where a sentence<sup>1</sup> of penal servitude is passed by a court-martial, the military convict<sup>2</sup> shall, as soon as practicable, be committed to a penal servitude prison<sup>3</sup> to undergo his sentence according to law:<sup>4</sup>

Provided that where the sentence was passed for an offence committed on active service,<sup>5</sup> the competent military authority<sup>6</sup> may order that any part of the sentence, not exceeding two years, shall be served in a military prison<sup>7</sup> in accordance with rules made for the purpose under this Act,<sup>8</sup> and in such case the provisions of this Act with respect to penal servitude (except those relating



to the treatment of a military convict on arrival at a penal servitude prison), shall, with respect to the part of the sentence to be so served, have effect as though for references to a penal servitude prison there were substituted references to a military prison. Part I.  
—  
ss. 58, 59.

## NOTE.

1. In the Army and Air Force (Annual) Act, 1926, the sections of the Army Act dealing with the execution of sentences and the nature and locality of the penal establishments in which those sentences are to be served (ss. 58-68 and 131-135) were redrafted to give effect to the recommendations of the Army Act Revision Committee, who had reported that the provisions, as they then stood, constituted a very confusing piece of legislation, and had given rise to great difficulties in practice. The redraft did not effect any substantial alteration of the law, except that of the addition of the proviso to this section which enables a soldier sentenced to penal servitude for an offence committed on active service to serve part of his sentence, not exceeding two years, in a military prison instead of in a penal servitude prison.

2. See generally as to a military convict, K.R. 676-679. For commencement of term of penal servitude, see s. 68 (1). For general provisions as to the forms of orders of military authorities, see s. 172.

3. *Penal servitude prison.* For definition see s. 68 (2) (g).

4. When a person sentenced to penal servitude is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, but the Army Act applies to him during the term of his sentence. See s. 158 (2).

5. *On active service.* For definition see s. 189.

6. *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (C).

7. *Military prison.* For definition see s. 68 (2) (d).

8. *Rules made for the purpose under this Act.* See s. 132 (2). The rules are contained in Rules for Military Detention Barracks and Military Prisons, and Rules for Military Prisons in the Field.

59. The penal servitude prison<sup>1</sup> to which a military convict is committed shall be a penal servitude prison in the United Kingdom, unless the convict— Place in which sentence to be served.

(a) was sentenced in India or a colony,<sup>2</sup> and belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared<sup>3</sup> that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial; or

(b) was enlisted in a colony,<sup>2</sup> and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to penal servitude, be transferred to or kept in the colony and there undergo sentence,

in either of which cases he may undergo his sentence in India or the colony, as the case may require.

## NOTE.

1. *Penal servitude prison.* For definition see s. 68 (2) (g).

2. For definitions of *India* and *colony*, see s. 190 (21) and (23); see also s. 187 (2) as to the Channel Islands and Isle of Man; and as to a mandated territory, s. 187A.

3. Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude:—

- (1) By reason of climate:—  
Asiatics and Africans.  
Other persons of colour.

- Part I. (2) By reason of place of birth:—  
 — Persons born out of the United Kingdom and domiciled in any place  
 ss. 59–61. not in the United Kingdom.  
 (3) By reason of place of enlistment:—  
 Persons engaged for service in the Royal Malta Artillery, or in any  
 Indian or colonial corps.

Interim  
custody of  
military  
convict before  
arrival at  
penal servitude  
prison.

60.—(1) Until transferred to a penal servitude prison<sup>1</sup> a military convict—

- (a) if in the United Kingdom or a foreign country,<sup>2</sup> shall be kept in military custody;  
 (b) if in India or a colony,<sup>3</sup> may be kept in military custody or in civil custody,<sup>3</sup> or partly in one description of custody and partly in the other, and may, by order of the competent military authority,<sup>4</sup> from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require.

(2) A military convict in India or a colony<sup>2</sup> may, whilst in civil custody in any prison, be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

#### NOTE.

1. *Penal servitude prison.* For definition see s. 68 (2) (g).
2. For definition of *foreign country*, see s. 190 (24); and for definitions of *India* and *colony*, see s. 190 (21) and (23). For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, the Channel Islands and Isle of Man are deemed to be colonies; s. 187 (2). As to a mandated territory, see s. 187A.
3. *Civil custody.* For definition see s. 68 (2) (c).
4. *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (D).

Committal,  
removal,  
release, &c.,  
of military  
convict.

61.—(1) An order of the competent military authority<sup>1</sup> shall be a sufficient warrant for the committal<sup>2</sup> of a military convict to a penal servitude prison.<sup>3</sup>

(2) An order of the competent military authority<sup>4</sup> shall be a sufficient authority for the transfer of the military convict from military custody to civil custody<sup>5</sup> and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient until he is transferred to a penal servitude prison.

(3) A military convict at any time either before or after his arrival at a penal servitude prison, may, if his sentence is remitted,<sup>6</sup> be released by order of the competent military authority.<sup>7</sup>

(4) A military convict may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

#### NOTE.

1. Subs. (1). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (F).
2. For form of order of commitment, see R.P., App. III, Forms A and B.
3. *Penal servitude prison.* For definition see s. 68 (2) (g).
4. Subs. (2). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (H).
5. For definition of *civil custody*, see s. 68 (2) (c).

6. It should be noted that under this section the release of a military convict can only be ordered by a competent military authority if his sentence is remitted by an authority having power to do so under s. 57. **Part I.**  
 7. Subs. (3). *Competent military authority.* See s. 68 (2) (h) and R.P. ss. 61-64.  
 126 (1).

62. After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the same manner as an ordinary civil prisoner under sentence of penal servitude; and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly. **Treatment of military convict in penal servitude prison.**

**NOTE.**

*Penal servitude prison.* For definition see s. 68 (2) (g).

***Imprisonment and Detention.***

63.—(1) Where a sentence of imprisonment is passed by a court-martial, the military prisoner shall undergo the term of his imprisonment either in a military prison, or detention barrack, or in other military custody, or in a civil prison, or partly in one way and partly in another. **Effect of sentence of imprisonment or detention.**

(2) Where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed shall undergo the term of his detention either in a detention barrack, or in military custody, or partly in one way and partly in the other, but not in a prison.

**NOTE.**

See generally as to soldiers under sentence, K.R. 680-690.

For general provisions as to forms of orders of military authorities, see s. 172. For commencement of term of imprisonment or detention, see s. 68 (1). As to the place in which sentence is to be served, see s. 64.

For definitions of *military prisoner*, *military prison*, *detention barrack*, and *civil prison*, see s. 68 (2) (b), (d), (e), and (f), respectively.

When a person sentenced to imprisonment or detention is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, but the Army Act applies to him during the term of his sentence. See s. 158 (2).

64.—(1) Subject to the provisions of this section, a military prisoner or soldier under sentence of detention who was sentenced or is undergoing his sentence in the United Kingdom shall not be removed to a prison or detention barrack elsewhere, unless he was enlisted in a colony<sup>1</sup> and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to imprisonment or detention, be transferred to the colony and there undergo sentence, in which case he may be removed to a prison or detention barrack in that colony. **Places in which sentence to be served.**

(2) The competent military authority<sup>2</sup> may give directions for delivery into military custody of any military prisoner or soldier undergoing detention, and the removal<sup>3</sup> of such prisoner or soldier, whether with his corps or separately, to any place beyond the seas where the corps or any part thereof to which for the time being he belongs is serving or under orders to serve.<sup>4</sup>

**Part I.** (3) A military prisoner or soldier under sentence of detention who was sentenced in a foreign country<sup>5</sup> shall undergo his sentence  
 — s. 64. either in that foreign country, or in any foreign country in which the force with which he is serving may be, or in the United Kingdom, or in such other place as may be prescribed.<sup>6</sup>

(4) A military prisoner or soldier under sentence of detention who was sentenced in India or a colony<sup>7</sup> shall undergo his sentence either in India or in that colony (as the case may be), or in such other part of His Majesty's dominions as may be prescribed,<sup>8</sup> or in the United Kingdom :

Provided that—

- (a) if the term of his sentence exceeds twelve months, he shall be transferred as soon as practicable to a prison or detention barrack in the United Kingdom, unless—
  - (i) he belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared<sup>9</sup> that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial; or
  - (ii) the court for special reasons otherwise orders; and any order which may be made under this provision by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence may be made by the authority commuting or remitting the sentence; and
- (b) a military prisoner or soldier undergoing detention in India or a colony shall not, for longer than is absolutely necessary, be detained in any civil prison other than a prison in respect of which arrangements have been made by the Secretary of State under this Act with the Governor-General of India or the Governor of the colony.

#### NOTE.

1. For definition of *colony*, see s. 190 (23). As to the Channel Islands and Isle of Man, see s. 187 (2); as to a mandated territory, see s. 187A.

2. *Competent military authority*. See s. 68 (2) (h) and R.P. 126 (H).

3. See generally as to removal of soldiers under sentence, K.R. 691-703.

4. The object of this sub-section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for service abroad. Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a station abroad. The section will prevent soldiers who are undergoing sentence for offences committed in order to avoid embarkation for service from achieving their object, but it gives no authority to commit such offenders to a prison or detention barrack on their arrival at a station abroad.

5. For definition of *foreign country*, see s. 190 (24).

6. *Or in such other place as may be prescribed*. See R.P. 130.

7. For definitions of *India* and *colony*, see s. 190 (21) and (23). For the purpose of the provisions of the Act relating to the execution of sentences of imprisonment and detention, the Channel Islands and Isle of Man are deemed to be colonies; s. 187 (2). As to a mandated territory, see s. 187A.

8. *Or in such other part of His Majesty's dominions as may be prescribed*. See R.P. 130.

Where a unit moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentences to a prison at the place

of destination of the regiment unless such prison has been prescribed, or is a military prison, and in the latter case the regulations on the subject must be observed. A soldier sentenced to detention may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to a detention barrack elsewhere save as provided in subs. (1).

9. Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of imprisonment or detention:—

- (1) By reason of climate:—  
Asiatics and Africans.  
Other persons of colour.
- (2) By reason of place of birth:—  
Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.
- (3) By reason of place of enlistment:—  
Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

**65.** A military prisoner or soldier undergoing detention may, until he reaches the prison or detention barrack in which he is to undergo his sentence, be kept in military custody or in civil custody,<sup>1</sup> or partly in one description of custody and partly in the other, and may, by order of the competent military authority,<sup>2</sup> from time to time be transferred from military custody to civil custody, and from civil custody to military custody as occasion may require.

**NOTE.**

1. For definition of *civil custody*, see s. 68 (2) (c).
2. *Competent military authority*. See s. 68 (2) (h) and R.P. 126 (E).

**66.**—(1) An order<sup>1</sup> of the competent military authority<sup>2</sup> shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a soldier under sentence of detention to a detention barrack.

(2) An order<sup>1</sup> of the competent military authority<sup>3</sup> shall be a sufficient authority for the transfer of a military prisoner from prison to a detention barrack, or vice versa, or from one prison or detention barrack to another prison or detention barrack, or for the transfer of a soldier undergoing detention from one detention barrack to another, or for the delivery into military custody of a military prisoner or a soldier undergoing detention.

(3) A military prisoner or a soldier undergoing detention may at any time, if his sentence is remitted,<sup>4</sup> be released by order of the competent military authority.<sup>5</sup>

(4) A military prisoner or a soldier undergoing detention may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

**NOTE.**

1. For forms of orders, see R.P. App. III.
2. Subs. (1). *Competent military authority*. See s. 68 (2) (h) and R.P. 126 (G).
3. Subs. (2). *Competent military authority*. See s. 68 (2) (h) and R.P. 126 (H).
4. It should be noted that under this section the release of a military prisoner or soldier undergoing detention can only be ordered by competent military

**Part I.**  
—  
**ss. 64-66.**

*Interim custody of military prisoner or soldier undergoing detention.*

*Committal, removal, release, &c., of military prisoner or soldier undergoing detention.*

Part I. authority if the sentence is remitted by an authority having power to do so under s. 57.

— 5. Subs. (3). *Competent military authority.* See s. 68 (2) (h) and R.P. ss. 66-68. 126 (1).

Treatment and classification of prisoners in civil prisons.

67.—(1) A military prisoner while in a civil prison shall be confined, kept to hard labour, and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment.

(2) Where the hospital or place for reception of sick persons in a prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

(3) Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules<sup>1</sup> for the classification and treatment of such prisoners.

#### NOTE.

1. See generally K.R. 680, 715; and Rules for Military Detention Barracks and Military Prisons.

#### *Commencement of Sentence and Interpretation of Provisions as to Punishment.*

Commencement of sentence and interpretation of provisions as to punishments.

68.—(1) The term of penal servitude, imprisonment, or detention to which a person subject to military law is sentenced by a court-martial, whether the sentence has been revised or not, and whether the person is already undergoing sentence or not shall (save as otherwise expressly provided in this Act),<sup>1</sup> be reckoned to commence<sup>2</sup> on the day on which the original sentence and proceedings were signed<sup>3</sup> by the president of the court-martial.

(2) For the purpose of the provisions of this Act relating to penal servitude, imprisonment and detention unless the context otherwise requires—

- (a) The expression "military convict" means a person under sentence of penal servitude passed by a court-martial;
- (b) The expression "military prisoner" means a person under sentence of imprisonment passed by a court-martial;
- (c) The expression "civil custody" means the custody of the police or other lawful civil authority authorised to retain in custody civil prisoners, and includes confinement in a civil prison;
- (d) The expression "military prison" means a building or part of a building set apart as such under this Act and includes (unless the Secretary of State otherwise directs) an air force prison;
- (e) The expression "detention barrack" means a building or part of a building set apart as such under this Act, and includes (unless the Secretary of State otherwise directs) an air force detention barrack;

- (f) The expression "civil prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined, and any prison in India or a colony in which European offenders so sentenced can for the time being be confined : **Part I.**  
—  
**s. 68.**

- (g) The expression "penal servitude prison" means any prison or place in which a person sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, and any prison or place in India or a colony in which persons sentenced to penal servitude by a civil court in India or the colony can for the time being be confined :

Provided that where there is no such prison or place in a colony the expression "penal servitude prison" shall, as respects that colony, mean a civil prison :

- (h) The expression "competent military authority" means in relation to persons—

(i) in the United Kingdom, the Army Council, and any prescribed officer<sup>4</sup>;

(ii) in India or a colony any prescribed officer<sup>4</sup>;

(iii) in a foreign country, the officer commanding the force to which the person under sentence belonged at the time of his being sentenced, and any prescribed officer<sup>4</sup> :

Provided that different officers may be so prescribed as the competent military authority for different purposes of the said provisions, and provision may be made by rules of procedure as to whether the competent military authority, in relation to any person under sentence, shall be the competent military authority in the place where the sentence was passed or the competent military authority in the place where that person may be.

#### NOTE.

1. *Save as otherwise expressly provided in this Act.* See s. 57A with regard to suspension of sentences.

2. Under this section a term of penal servitude, imprisonment or detention under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude, imprisonment or detention, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to inflict (*s.g.*) six months' additional imprisonment on a prisoner already in prison undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months, and similarly with respect to sentences of penal servitude and detention. The period of imprisonment or detention must, however, never exceed two consecutive years, whether under one or more sentences; s. 44, proviso (1B).

A term of penal servitude, imprisonment or detention awarded by way of commutation must commence on the date of the original sentence even though such sentence was one of a different character; s. 57 (5).

3. It is essential that the proceedings be dated as well as signed. When however, a president, after recording the finding and sentence in his own handwriting, omitted to either sign or date the proceedings, it was ruled that even after confirmation he could sign them and date his signature as of the true date of the decision.

4. *Prescribed officer.* See R.P. 126.

## Part I.

ss. 69, 70.

## MISCELLANEOUS.

*Articles of War and Rules of Procedure.*

Power of His  
Majesty to  
make Articles  
of War.

**69.** It shall be lawful for His Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever: Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

Power of His  
Majesty to  
make rules  
of procedure.

**70.**—(1) Subject to the provisions of this Act His Majesty may, by rules<sup>1</sup> to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them; that is to say,

- (a) The assembly and procedure of courts of inquiry;
- (b) The convening and constituting of courts-martial;
- (c) The adjournment, dissolution, and sittings of courts-martial;
- (d) The procedure to be observed in trials by court-martial;
- (e) The confirmation and revision of the findings and sentences of courts-martial, and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial;
- (f) The carrying into effect sentences of courts-martial;
- (g) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, imprisonment, or detention;
- (h) Any matter in this Act directed to be prescribed;
- (i) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law.

(2) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.

(3) All rules made in pursuance of this section shall be judicially noticed.

(4) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

(5) The rules as to the procedure of courts of inquiry may provide for evidence being taken on oath and may empower courts of inquiry to administer oaths for that purpose.



(6) The rules as to the investigation of a charge may provide **Part I.**  
for a written summary of the evidence being taken on oath, and  
may empower a commanding officer or any officer, before whom he **ss. 70-72.**  
directs such summary to be taken, to administer oaths for that  
purpose.

**NOTE.**

1. The "Rules of Procedure" made under this section must not (see subs. (2)) contain anything contrary to, or inconsistent with, any provision of the Act itself. Consequently, if any rule is found to conflict with some section of the Act, the statutory provision must prevail.

*Command.*

**71.—**(1) For the purpose of removing doubts<sup>1</sup> as to the powers Removal of doubts as to military command.  
of command vested or to be vested in officers and others belonging  
to His Majesty's forces, it is hereby declared that His Majesty  
may, in such manner as to His Majesty may from time to time  
seem meet, make regulations<sup>2</sup> as to the persons to be invested  
as officers, or otherwise, with command over His Majesty's forces,  
or any part thereof, or any person belonging thereto, and as to the  
mode in which such command is to be exercised.

(2) Nothing in this section shall be deemed to be in derogation  
of any power otherwise vested in His Majesty.

**NOTE.**

1. This section removes all doubts as to the power of His Majesty to regulate the command by officers of the regular forces over those forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces.

2. The regulations are contained in K.R. 170-192.

*Inquiry as to and Confession of Desertion.*

**72.—**(1) When any soldier has been absent without leave from Inquiry by court on absence of soldier.  
his duty for a period of twenty-one days,<sup>1</sup> a court of inquiry may  
as soon as practicable be assembled,<sup>2</sup> and inquire in the prescribed  
manner<sup>3</sup> on oath or solemn declaration (which such court is hereby  
authorised to administer) respecting the fact of such absence,  
and the deficiency<sup>4</sup> (if any) in the arms, ammunition, equipments,  
instruments, regimental necessities, or clothing of the soldier,  
and if satisfied of the fact of such soldier having absented himself  
without leave or other sufficient cause, the court shall declare<sup>5</sup> such  
absence and the period thereof, and the said deficiency, if any, and  
the commanding officer of the absent soldier shall enter in the  
regimental books<sup>6</sup> a record of the declaration of such court.<sup>7</sup>

(2) If the absent soldier does not afterwards surrender or is  
not apprehended, such record shall have the legal effect of a  
conviction by court-martial for desertion.

**NOTE.**

1. In calculating the period of 21 days, the day on which the soldier became absent and the day on which the court is assembled must be excluded from the reckoning. If the court assembles a day too soon, the record of their declaration is not admissible in evidence.

2. In the event of a soldier being absent without leave for a period of 21 clear days (see preceding note), a court of inquiry must be assembled at once,

**Part I.** unless before such court of inquiry has been assembled it has come to the knowledge of the soldier's C.O. that the soldier has been apprehended or has surrendered. In that case no court of inquiry will be held, and the fact of his absence and the deficiency (if any) of his clothing, &c., must be proved by oral evidence at any subsequent court-martial (K.R. 742). No court of inquiry will be held in the case of absconded recruits.

ss. 72, 73.

3. *Prescribed manner.* See R.P. 125.

4. Before declaring any deficiency of arms, &c., the court will satisfy themselves by evidence that the absentee was in possession of the missing articles within a reasonable period before the date of absentsing himself. They will record the values of the unexpired wear of all articles of government property found to be deficient. (K.R. 742.)

5. The declaration of the court should contain—

The date and place from which the soldier absented himself; and

The date of the deficiency (if any) of clothing, &c., and the place where it occurred.

The procedure of such a court is detailed in R.P. 125: under that rule and this section the witnesses will be sworn, but not the members of the court. As to the form of declaration, see notes to R.P. 125.

6. In order to make the record admissible in evidence it must be a record in the regimental books of the unit to which the soldier belonged at the time, signed by the C.O. thereof (s. 163 (1) (g)). See generally as to such record, K.R., 1620.

7. The actual proceedings of the court are not admissible in evidence. They should be destroyed as soon as recorded in the regimental books. See R.P. 125 (c).

The record of the court's finding will be admissible, notwithstanding that the soldier had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his C.O.

When a soldier who has been "struck off" as a deserter, upon the finding of the court, rejoins, the C.O., if satisfied that the evidence does not justify a charge of desertion, can legally deal with the case as one of absence without leave: but as a rule he should refer it to superior authority.

As to inquiry into absence from duty of a man of the Territorial Army, when subject to military law, see T.R.F. Act, s. 24 (4).

Confession  
by soldier of  
desertion or  
fraudulent  
enlistment.

73.—(1) Where a soldier signs a confession<sup>1</sup> that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures<sup>2</sup> and the same deductions from pay<sup>3</sup> (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3) The competent military authority for the purposes of this section means the Army Council, or any prescribed general officer or brigadier,<sup>4</sup> or, in the case of India,<sup>5</sup> the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint, and in the case of a colony<sup>6</sup> and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Army Council.

## NOTE:

## Part I.

1. Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act. See K.R. 608-613.

ss. 73-75.

2. If he has not completed 12 years' service, *i.e.*, the term of his original enlistment, he will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his trial being dispensed with; and the forfeited service can only be restored by the Army Council; s. 79 (proviso); see also K.R. 246. A soldier serving on a re-engagement at the time of confessing will forfeit all prior service rendered during the period of such re-engagement. See notes to ss. 79 and 84.

3. The deductions from pay are regulated by s. 133 and the P. W.

4. *Prescribed general officer or brigadier*: see R.P. 126 (j).

5. For definition of *India and colony*, see s. 190 (21) and (23); and as to the *Isle of Man and Channel Islands*, see s. 187 (2).

*Provost Marshal.*

74.—(1) For the prompt repression of all offences which may be committed abroad, provost marshals<sup>1</sup> with assistants may from time to time be appointed by the general order of the general officer or brigadier commanding a body of forces. Provost Marshal.

(2) A provost marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority:

Provided that a provost marshal and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison.<sup>2</sup>

## NOTE.

1. See generally as to provost marshal, Ch. IV, para. 40.

2. *The governor of a military prison*. The powers of such a governor are prescribed by the rules made under s. 132.

*Restitution of Stolen Property.*

75.—(1) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property,<sup>1</sup> and the property or any part thereof is found in the possession<sup>2</sup> of the offender, the authority confirming the finding and sentence of such court-martial, or the Army Council, may order the property so found to be restored to the person appearing to be the lawful owner thereof. Power as to restitution of stolen property.

(2) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or the Army Council to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3) Moreover, where it appears to the confirming authority or the Army Council from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or the Army Council

Part I. may, on the application of that person, and on the restitution  
— of the said property to the owner thereof, order that out of the  
s. 75. money (if any) found in the possession of the offender, a sum not  
exceeding the amount of the proceeds of the said sale or pawning  
shall be paid to the said person purchasing or taking in pawn.

(4) An order under this section shall not bar the right<sup>3</sup> of any  
person, other than the offender, or any one claiming through  
him, to recover any property or money delivered or paid in pur-  
suance of an order under this section from the person to whom the  
same is so delivered or paid.<sup>4</sup>

#### NOTE.

1. The word "property" should be construed in a wide sense as including,  
e.g., money; cf. s. 18 (4), and see Larceny Act, 1916, s. 46.

2. Found in the possession. This is not limited to property found "upon"  
the offender: if he occupies a house, property found in it is *prima facie* in his  
"possession."

3. The stealing or embezzlement of property does not alter the ownership,  
and therefore *prima facie* the person from whom property has been stolen or  
embezzled is the lawful owner of it.

4. An order under this section cannot be made by the court: but the court  
should report to the proper authority any circumstances which appear to  
justify the making of an order.

If the offender is sentenced by the court to be placed under stoppages in  
respect of the property stolen or unlawfully obtained, allowance must be  
made in enforcing such stoppages for money found upon him and appro-  
priated in restitution; see K.R. 655.

## Part II.

s. 76.

## PART II.

### ENLISTMENT.

For history of service in the Army, see Ch. IX, and for general explanation of  
this Part see Ch. X.

For regulations as to recruiting, transfers, discharge and service, see K.R.  
222, et seq., and the Recruiting Regulations.

As is recognised in s. 80 (1), enlistment is a species of "contract" between the  
Sovereign and the recruit. A man who repents of his bargain may within three  
months purchase his discharge (s. 81), provided that no proclamation continuing  
soldiers in army service has been issued under s. 88 (1); the Crown may lawfully  
discharge him at any time, and in practice his undertaking is so worded, viz., to  
serve for a fixed period "provided His Majesty should so long require your services."  
The provisions as to enlistment are contained in ss. 76-101, supplemented by  
ss. 13, 32-34, and 181 (1).

#### Period of Service.

Limit of  
original en-  
listment.

76. A person may be enlisted<sup>1</sup> to serve His Majesty as a soldier  
of the regular forces for a period of twelve years, or for such less  
period<sup>2</sup> as may be from time to time fixed by His Majesty, but  
not for any longer period,<sup>3</sup> and the period for which a person  
enlists is in this Act referred to as the term of his original enlist-  
ment<sup>4</sup>:

Provided that the Army Council in special cases or classes of cases may by order direct that where a boy is enlisted before attaining the age of eighteen, the period of twelve years shall be reckoned from the day on which he attains the age of eighteen years.<sup>5</sup> **Part II.** ss. 76-78.

## NOTE.

1. The terms of enlistment for the various arms of the service are prescribed by the Regulations for Recruiting.

2. In the case of men who enlist for less than 12 years at the outset, the Army Council may, under s. 78 (1) (c), allow them to extend their term up to a total of 12 years (or less).

3. Though this section fixes 12 years as the maximum period for which a recruit may be allowed to bind himself at the outset, ss. 84-86 contain provisions under which soldiers may be allowed to re-engage or continue in the service for further periods. Conversely, ss. 87 and 88 contain provisions under which the Army Council have powers, in certain circumstances, to retain in army service soldiers who would normally be due for discharge or transfer to the reserve.

4. *Original enlistment.* For the purpose of this part of this Act, the term "original enlistment" has regard to the engagement on which a soldier is actually serving.

5. The proviso, added by the A. & A.F. (A.) Act, 1922, gives the Army Council power to authorise the enlistment of boys for a period of twelve years from the date on which they reach the age of eighteen years.

**77.** The original enlistment<sup>1</sup> of a person under this Act shall be as follows, either— Terms of original enlistment;

- (1) For the whole of the term of his original enlistment in army service<sup>2</sup>; or
- (2) For such portion of the term of his original enlistment as may be from time to time fixed by the Army Council, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

## NOTE.

1. *Original enlistment.* See note 4 to s. 76.

2. "Army service" means "service with the colours."

**78.**—(1) The Army Council may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service,<sup>1</sup> with their assent, either— Change of conditions of service.

- (a) To enter the reserve at once<sup>2</sup> for the residue unexpired of the term of his original enlistment,<sup>3</sup> or
  - (b) To extend<sup>4</sup> his army service for all or any part of the residue unexpired of such term; or
  - (c) To extend<sup>4</sup> the term of his original enlistment up to the period of twelve years, or any shorter period.
- (2) The Army Council may from time to time, by general or special regulations, vary the conditions of service so as to permit a man in the reserve, with their assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

## Part II.

## NOTE.

- ss. 78, 79. 1. *Army service.* See note 2 to s. 77.  
 2. This section deals only with variations made with the soldier's consent. See K.R. 338 and 369. As to compulsory transfer in certain cases see s. 89.  
 3. *Original enlistment.* See note 4 to s. 76.  
 4. As regards extension of service with the colours see K.R. 222-230, and Ch. X, para. 6.

Reckoning  
and for-  
feiture of  
service.

79. In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

- (1) The service shall begin to reckon from the date of his attestation<sup>1</sup>; but
- (2) Where a soldier of the regular forces has been guilty of any of the following offences:—
  - (a) Desertion from His Majesty's service, or
  - (b) Fraudulent enlistment,
 then either upon his conviction by court-martial of the offence, or (if, having confessed the offence, he is liable to be tried<sup>2</sup>) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service<sup>3</sup> shall be forfeited<sup>4</sup>, and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment,<sup>5</sup> reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date:

Provided that the Army Council may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by the Army Council to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.<sup>6</sup>

## NOTE.

1. *Date of his attestation.* In the case of a boy enlisted before attaining the age of 18 years under the terms of the proviso to s. 76, the expression "date of his attestation" in this section means, in effect, the date specified in his attestation for the commencement of the "period of service," i.e., the date on which 18 years of age is attained. See also note 2 to s. 84.

2. *If he is liable to be tried.* These words exclude the application of the paragraph in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment. Under s. 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section; but if the offence to which he confesses was that of fraudulent enlistment, he will under s. 161 forfeit all service prior to the date of his fraudulent enlistment, except that if he fraudulently enlisted during a period of re-engagement, he will only forfeit the service rendered during such re-engagement. Under the proviso to that section, on the other hand, the Army Council have the same power of restoring service so forfeited as they have under this section. See K.R. 246, and note 6 to s. 161.

3. *The whole of his prior service.* This refers to all his previous service rendered on any engagement current during the term of his original enlistment. As to forfeiture of service in the case of a re-engaged soldier, see s. 84 (2) and note, and K.R. 246.

4. A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment or detention, but if he is convicted of desertion or fraudulent enlistment (or, if having confessed and if he is liable to trial, trial is dispensed with), he will forfeit all his prior service rendered during the term of his original enlistment or during the period of re-engagement, as the case may be, and begin again as if he had enlisted or re-engaged at the date of his conviction (or date of order dispensing with trial), all variations of his original

conditions of service being automatically cancelled. This applies to variations of conditions such as an extension of army service under s. 78 (1) (b), but not to variations of the term of his original enlistment such as an extension of service under s. 78 (1) (c). Part II.  
ss. 79, 80.

In cases where, on a charge of desertion, the court find that the accused did the act which forms the subject of the charge but was insane at the time when he did the same, no service is forfeited, as such a finding negatives the intention which is a necessary element of the offence, and there is no conviction.

Para. (2) applies to the reckoning of service for purposes of discharge or transfer to the reserve only. Forfeiture of ordinary pay is dealt with in s. 138, and the Pay Warrant, while forfeiture of service towards pension is regulated by the Pay Warrant.

If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service on new engagement will be reckoned from the date of his improper attestation; see K.R. 247.

The paragraph does not apply to men of the Territorial Army.

5. *Original enlistment.* See note 4 to s. 76.

In a case of fraudulent enlistment, service is forfeited on all current engagements, and "original enlistment" here means the engagement on which the man is held to serve. (See note 6.)

6. The Army Council may restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it. See K.R. 246. A soldier who deserts and fraudulently re-enlists has entered into two mutually incompatible engagements, and the Crown can elect upon which of them he shall be held to serve. In either case, whether the soldier is held to serve on his last attestation or relegated to his former corps for the term of his original enlistment, the restored service will count for the purpose of reckoning service towards discharge or transfer to the reserve.

### *Proceedings for Enlistment.*

80.—(1) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by the Army Council, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace either forthwith or at the time and place therein mentioned.<sup>1</sup> Mode of  
enlistment  
and  
attestation.

(2) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he has been served with and understands the notice and whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4) If he assents to be enlisted—

(a) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper<sup>2</sup> for the time being authorised by the Army Council, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth

Part II.  
—  
ss. 80, 81.

of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper :

- (b) Upon signing the declaration and taking the oath,<sup>3</sup> such person shall be deemed to be enlisted as a soldier of His Majesty's regular forces :<sup>4</sup>
  - (c) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated to the recruiter :
  - (d) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice :
  - (e) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.
- (5) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.
- (6) The competent military authority,<sup>5</sup> if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.
- (7) Where the regulations of the Army Council under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.<sup>2</sup>

NOTE.

1. A man is under this Act enlisted by the act of attestation. The recruiter will give the form authorised by the Army Council, directing the recruit to appear before a justice. The man, if he fails to appear, cannot be arrested as a deserter. No account will be taken of any man before he is actually attested before a justice. As to the persons (including certain officers) entitled to exercise the functions of a justice in the United Kingdom and elsewhere, see s. 94.

2. The attestation paper is required to be in duplicate, K.R. 1613-1618.

3. A recruit who objects to take the oath may "affirm" (*Towler v. Sutton* (1916), 80 J.P. 461).

4. After attestation a man can only get off his contract of enlistment by purchasing his discharge under s. 81 (*q.v.*).

5. *Competent military authority*. As to the meaning of this expression, see s. 101 and R.P. 128.

Power of  
recruit to  
purchase  
discharge.

81. If a recruit within three months after the date of his attestation pays for the use of His Majesty a sum not exceeding twenty pounds, he shall be discharged<sup>1</sup> with all convenient speed, unless he claims such discharge during a period when soldiers in army service, who otherwise would be transferred to the reserve, are required by a proclamation of His Majesty in pursuance of this Act to continue in army service, in which case he may be retained



in His Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged. Part II.  
—  
ss. 81-83.

NOTE.

1. See K.R. 370 (vii) for discharge procedure.

### *Appointment to Corps and Transfers.*

**82.—(1)** Recruits may, in pursuance of any general or special regulations from time to time made by the Army Council, be enlisted for service in particular corps, but save as is provided by such regulations, if any, recruits shall be enlisted for general service. Enlistment  
for general  
service and  
appointment  
to corps.

(2) The competent military authority<sup>1</sup> shall as soon as practicable appoint<sup>2</sup> a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to such corps as the competent military authority may think fit.

Provided that in the case of a boy enlisted for general service before attaining the age of eighteen, he need not be appointed to a particular corps until he attains that age.

NOTE.

1. *Competent military authority.* As to the meaning of this expression, see s. 101 and R.P. 128.

2. *Appoint.* It may be convenient here to explain the meanings of the words "appoint," "post," "transfer" and "attach."

A soldier on attestation is "appointed" to a corps out of which he cannot be moved without his consent, except as mentioned in the Act. This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier.

Any disposition of a soldier within his corps which can legally be effected independently of his consent is termed "posting." He may be posted to any unit (i.e. battalion, depot, battery, company, &c.) within his corps, to the regular establishment of a militia unit within such corps, or to the permanent staff of any Territorial Army unit belonging to such corps.

"Transfer" is a disposition of the soldier which moves him out of the corps to which he was originally appointed, or to which for the time being he belongs, into another corps, either with his consent or under special conditions provided by the Act.

"Attach" means removing temporarily a soldier either with or without his consent from his own unit and placing him with another unit, without affecting in any way his status in the first-mentioned unit.

**83.** A soldier of the regular forces, whether enlisted for general service or not, when once appointed<sup>1</sup> to a corps, shall serve in that corps for the period of his army service,<sup>2</sup> whether during the term of his original enlistment<sup>3</sup> or during the period of such re-engagement as is in this Act mentioned, unless transferred<sup>1</sup> under the following provisions:—

Effect of  
appointment  
to a corps  
and pro-  
vision for  
transfers.

- (1) A soldier of the regular forces enlisted for general service may within three months<sup>4</sup> after the date of his attestation or at any time whilst a Proclamation ordering the army reserve to be called out on permanent service is in force<sup>5</sup> be transferred to any corps of the same arm or branch of the service by order of the competent military authority;<sup>6</sup>
- (2) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority<sup>6</sup> to any corps:

## Part II.

s. 83.

- (3) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority<sup>6</sup> may by order vary the conditions of his service<sup>7</sup> so as to correspond with the general conditions of service in the arm or branch to which he is transferred :
- (4) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority<sup>6</sup> to any corps of the same branch which is serving in the United Kingdom in either of the following cases :—
- (a) When he has been invalided from service beyond the seas ; or
- (b) When, in the case of his corps or the part thereof in which he is serving<sup>8</sup> being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned :
- (5) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving<sup>8</sup> being ordered to another station or to return home has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority<sup>6</sup> to any corps of the same branch which or a part of which is on service beyond the seas :
- (6) Where a soldier of the regular forces has been transferred to serve,<sup>9</sup> either as a warrant officer, or on the staff, or in any corps not being a corps of infantry, cavalry, artillery, or engineers,<sup>10</sup> he may by order of the competent military authority,<sup>6</sup> either during the term of his original enlistment or during the period of his re-engagement be removed from such service and transferred to any corps serving in the United Kingdom, or to any corps serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank :
- (7) Where a soldier of the regular forces—
- (a) Has been guilty of the offence of desertion from His Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried,<sup>11</sup> but his trial has been dispensed with by order of the competent military authority ; or
- (b) Has been sentenced by a court-martial for any offence to a punishment not less than detention for a term of three months.

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps as the competent military authority<sup>6</sup> may from time to time order :

Part II.

s. 83.

- (8) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of His Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority<sup>6</sup> to any corps near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is so transferred without prejudice to his subsequent trial and punishment.

Where by Royal Warrant any corps is amalgamated with any one or more other corps, or the constitution of a corps is altered, or any unit is transferred from one corps to another, any soldier who at the date of the amalgamation, alteration or transfer was serving in such corps or unit shall be liable to serve in the amalgamated corps or the altered corps or the corps to which his unit is transferred, as the case may be, in like manner as if it were the corps in which he was previously serving, but he shall not be liable without his consent to serve in any unit in that corps in which he could not, without his consent, have been required to serve if no such amalgamation, alteration or transfer had been effected.

#### NOTE.

1. *Appointed—transferred.* See note 2 to s. 82. See generally as to transfers, K.R. 292-303.

2. *Army service.* See note 2 to s. 77.

3. *Original enlistment.* See note 4 to s. 76.

4. The transfer during these three months does not require the consent of the soldier. During those three months he is entitled to his discharge under s. 81 on proper demand and payment.

5. The words "or at any time....in force" do not apply to men enlisted before August 4th, 1914.

6. *Competent military authority.* As to the meaning of this expression, see s. 101 and R.P. 128.

7. *Vary the conditions of his service.* This is to provide for such a case as the transfer of a man from the Royal Artillery to the infantry of the line. The period of service with the colours in the infantry is longer than in the Royal Artillery, and it would consequently be necessary to lengthen the army service of the man transferred.

8. *Or the part thereof in which he is serving.* These words are inserted in consequence of "corps" including the whole of an infantry regiment, part of which will probably be serving in and the other part out of the United Kingdom.

9. *Transferred to serve.* This applies to a warrant officer promoted to that rank in any corps other than those mentioned in para. (6) or into any establishment which is not a "corps."

10. *Or in any corps not being a corps of infantry, cavalry, artillery, or engineers.* For definition of "corps" see s. 190 (15). See also Ch. XI, paras. 3 and 4.

11. *Is liable to be tried.* A soldier who, though having confessed an offence, is exempted by s. 161 from trial and punishment, is by virtue of these words relieved from liability to general service under this paragraph. The liability to general service is a commutation of punishment which may be allowed by the competent military authority, and is not a punishment which a court-martial can award. Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s. 57.

An order made under this paragraph will be entered in the soldier's record of service; K.R. 657.

## Part II.

*Re-engagement and Prolongation of Service.*

ss. 84, 85.

Re-engagement of soldiers.

84.—(1) Subject to any general or special regulations<sup>1</sup> from time to time made by the Army Council, a soldier of the regular forces, if in army service, and after the expiration of nine years from the date of his original term of enlistment,<sup>2</sup> may on the recommendation of his commanding officer, and with the approval of the competent military authority,<sup>3</sup> be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation,<sup>3</sup> and inclusive of any period previously served in the reserve.

(2) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this part of this Act during the term of his original enlistment.<sup>4</sup>

(3) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

## NOTE.

1. For the regulations under this section of the Act, see K.R. 231-235.

2. *Date of his original term of enlistment—date of his attestation.* In the case of a boy enlisted before attaining the age of eighteen years under the terms of the proviso to s. 76, the expression "date of his original term of enlistment" means, in effect, the date from which, on enlistment, he undertook that his "period of service" should reckon, *i.e.*, his 18th birthday. The expression "date of his attestation" in this sub-section will be similarly interpreted. See also note 1 to s. 79.

3. *Competent military authority.* As to the meaning of this expression see s. 101 and R.P. 128.

4. The effect of this sub-section is that a soldier serving on a re-engagement, who is convicted by court-martial of desertion or fraudulent enlistment, or who, being liable to trial, has had his trial for either of these offences dispensed with by the competent military authority, forfeits all prior service rendered during the period of such re-engagement, *i.e.*, from the day following that on which he completed twelve years' service. The Army Council may restore all or part of such forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it; see proviso to s. 79 and K.R. 246.

Continuance in service after 21 years' service.

85. A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years' service, inclusive of any period served in the reserve<sup>1</sup>, may give notice to his commanding officer of his desire to continue in His Majesty's service in the regular forces; and if the competent military authority<sup>2</sup> approve he may be continued<sup>3</sup> as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.<sup>4</sup>

## NOTE.

1. *Inclusive of any period served in the reserve.* This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-engaged, or has been permitted to rejoin the colours and has re-engaged.

2. *Competent military authority.* As to the meaning of this expression see s. 101 and R.P. 128.

3. See K.R. 236-245, as to conditions, &c., of continuance in the service under this section. Part II.

4. A soldier who continues his service under this section, and subsequently gives three months' notice thereunder, can be retained under s. 87 (1) for twelve months from the expiry of his notice. ss. 85-87.

**86.** The regulations from time to time made in pursuance of this part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage, under section eighty-four, and to continue his service, under section eighty-five of this Act, or to do either of such things, subject, nevertheless, to the veto of the Army Council or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

Re-engagement and continuance of service of non-commissioned officers.

#### NOTE.

The object of this section is to enable regulations to be made by which a N.C.O., who agrees to extend his army service for the whole of his twelve years, may have the right to treat the army as his profession for life, and, if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension. For the regulations under this part of the Act, see K.R. 231-245.

**87.—(1)** Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between His Majesty and any foreign power, or while such soldier is on service beyond the seas, or while soldiers in the reserve<sup>1</sup> are required by proclamation,<sup>2</sup> in pursuance of the enactments relating to the calling out of the reserve on permanent service, to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority<sup>3</sup> may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed.

Prolongation of service in certain cases

(2) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between His Majesty and any foreign power, or while such soldier is on service beyond the seas, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall with all convenient speed be sent to the United Kingdom for the purpose of being transferred to the reserve, unless at that time a proclamation calling out the army reserve or any part thereof is in force.

(3) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between His Majesty and any foreign power, to continue in His Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the

Part II. same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of ss.87,88. such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.<sup>4</sup>

(4) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by the Army Council.

#### NOTE.

1. *The reserve*: see definition in s. 101 (2).
2. *Required by proclamation, &c.* See s. 88, and Reserve Forces Act, 1882, s. 12 (4).
3. *Competent military authority.* See s. 101, and R.P. 128.
4. This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging, or extending his service.

In imminent national danger, His Majesty may continue soldiers in army service or call out reserve for permanent service.

88.—(1) It shall be lawful for His Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting declared by the proclamation, to order that the soldiers<sup>1</sup> who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

(2) It shall be lawful for His Majesty by any such proclamation to order the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3) Every soldier for the time being required by or in pursuance of such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve and called out for permanent service by a proclamation of His Majesty under the enactments relating to the reserve.

(4) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation<sup>2</sup> of His Majesty under the enactments relating to the calling out of the reserve on permanent service.

#### NOTE.

1. This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve. The effect of the Reserve Forces Act, 1882, s. 14, is that all men in the reserve may be required to serve for a further period of twelve months in the circumstances in which a soldier may be detained in service under s. 87.

2. The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency. A man in Section A of the army reserve may be called out for permanent service under the Reserve Forces and Militia Act, 1898, without any proclamation or previous communication to Parliament (see Ch. XI, paras. 20 and 29).

*Discharge and Transfer to Reserve Force.*

## Part II.

89. In the following cases ; that is to say,

- (1) Where a soldier of the regular forces has been invalided from service beyond the seas ; or
- (2) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas, and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

ss. 89, 90.

Transfer of  
soldier to  
reserve when  
corps  
ordered  
abroad.

the competent military authority<sup>1</sup> may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

## NOTE.

1. *Competent military authority.* See s. 101 and R.P. 128.

90.—(1) Save as otherwise provided<sup>1</sup> by this Act or the Acts relating to the reserve forces, every soldier of the regular forces, upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged<sup>2</sup> with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

Discharged  
or trans-  
ferred to  
reserve.

(2) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve,<sup>3</sup> but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom<sup>4</sup> free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second subsection of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost. Provided that in the case of transfer to the reserve he shall not be entitled to be so conveyed to any place out of the United Kingdom.

## Part II.

## NOTE.

— ss. 90, 91. 1. *Save as otherwise provided.* e.g., s. 87 provides for the temporary prolongation of service of a man entitled to discharge, and s. 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve.

As to time of discharge, see s. 92; and as to postponement of transfer to the reserve, see s. 87.

2. The procedure for transfer to the army reserve or discharge is laid down in K.R. 338-391.

When a soldier is transferred to the army reserve, he receives a "certificate of service" which embodies a certificate of transfer to the army reserve and character certificate; K.R. 392. See also note 4 to s. 92.

3. As to power to allow a reservist to reside out of the United Kingdom, see the Reserve Forces Acts, 1899 and 1906, pp. 842-3, and K.R. 340, 457. See also P.W. 1161-1163.

Delivery of lunatic soldier on discharge with his wife or child at workhouse, or of dangerous lunatic at asylum.

91.—(1) The Army Council or any officer deputed by them for the purpose, may, if they or he think proper, on account of a soldier's lunacy,<sup>1</sup> cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland<sup>2</sup> at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be.

(2) Provided that the Army Council, or any officer deputed by them for the purpose, where it appears to them or him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under their or his hand, send such lunatic direct to an asylum, registered hospital, licensed house, or other place in which pauper lunatics can legally be confined, and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent.

(3) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed<sup>3</sup>, and an order of the Army Council or officer under this section shall be of the same effect as a summary reception order within the meaning of the Lunacy Act, 1890, and the like proceedings shall be taken thereon as on an order under that Act.

(4) The Army Council or officer, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Army Council or officer may make the said order for sending the lunatic to that asylum, and such order shall be of the same effect as an order by the sheriff within the meaning of section fifteen of the Lunacy (Scotland) Act, 1862, and the like proceedings shall be taken thereon as on an order under that section.



(5) In the case of any such lunatic, who is liable to be delivered at a workhouse in Ireland<sup>2</sup> at which persons settled in the said union are received, the Army Council or any officer deputed by them for the purpose may, by order under their or his hand, send such lunatic to the asylum of the district in which such union is situate, and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Act of the session of the thirtieth and thirty-first years of the reign of Her late Majesty, chapter one hundred and eighteen, intituled "An Act to provide for the appointment of the officers and servants of district lunatic asylums in Ireland," and to alter and amend the law relating to the custody of dangerous lunatics and dangerous idiots in Ireland."

Part II.

ss. 91, 92.

## NOTE.

1. See further as to lunatic soldiers, K.R. 388-391.
2. As regards the Irish Free State, see note 10 to s. 190.
3. *To the asylum....to which, &c..... i.e., the mental hospital of the county, borough, &c.*

**92.**—(1) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy, or by order of the competent military authority,<sup>1</sup> or by authority direct from His Majesty, and until duly discharged in manner provided by this Act and by regulations of the Army Council under this Act shall be subject to this Act.<sup>2</sup>

Regulations  
as to dis-  
charge of  
soldiers.

(2) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge,<sup>3</sup> stating such particulars as may be from time to time required by regulations of the Army Council under this Act.<sup>4</sup>

(3) Notwithstanding anything in Part III of the Territorial and Reserve Forces Act, 1907, a man who has been discharged from the regular forces may, if it is so prescribed by regulations under the Reserve Forces Act, 1882, and subject to the conditions (if any) so prescribed, enlist into the army reserve as a militiaman.

## NOTE.

1. *Competent military authority.* See s. 101 and R.P. 128.
2. The terms of the attestation of a soldier bind him to serve so long as his services are required. Consequently the Crown has always a right to discharge him if his services are not required; see Ch. X, para. 30.

A soldier's discharge is regarded as taking effect from the date of the confirmation of his discharge and not from the date of the delivery of the certificate of discharge to him, nor from the date of his sentence (or confirmation thereof) when a court-martial has sentenced him to be discharged with ignominy.

Until a soldier's discharge is confirmed, he remains subject to military law, but any undue delay in carrying out the discharge would give good ground for complaint on the part of a soldier.

The conditions which must be fulfilled before a discharge is valid and complete, are those laid down in this sub-section and in K.R. 338 to 377.

3. This sub-section and K.R. 392-410 give a statutory right to a soldier who has been duly discharged in accordance with subs. (1) to demand a certificate of discharge; the delivery of the certificate is not a necessary condition of discharge, but rather a necessary consequence of it.

4. A "certificate of service" which embodies certificate of discharge and certificate of character, is completed and signed by the prescribed authorities, and is delivered to the man in such manner as the Army Council may direct. If possible it should reach him on or before his last day of service. See Ch. X, para. 31, and K.R. 392-410.

## Part II.

*Authorities to enlist and attest Recruits.*

ss. 93-95.  
Regulations  
as to persons  
to enlist and  
enlistment of  
soldiers.

93. The Army Council may from time to time make, and when made, revoke and alter a general or special order making such regulations, giving such directions, and issuing such forms as they may think necessary or expedient respecting the persons authorised to enlist recruits for His Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act.

NOTZ.

See s. 80 (ante) and the Recruiting Regulations.

Justices of  
the peace for  
the purposes  
of enlist-  
ment.

94. For the purposes of the attestation of soldiers in pursuance of this part of this Act—

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of the Army Council,<sup>1</sup> also every person exercising the office of a magistrate in India or a colony,<sup>2</sup> and also each of the following persons, shall have the authority of a justice of the peace,<sup>3</sup> and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers<sup>4</sup>; that is to say,—

In India,<sup>5</sup> any person duly authorised in that behalf by the Governor-General; and in the territories of any native state in India, the person performing the duties of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor-General of India; and

In a colony,<sup>6</sup> any person duly authorised in that behalf by the governor of the colony; and

Beyond the limits of the United Kingdom, India, and a colony, any British consul general, consul, or vice-consul, or person duly exercising the authority of a British consul.

[Subsection (2) repealed by 46 Vict. c. 6. s. 6.]

NOTZ.

1. The officers authorised to attest recruits are specified in the Recruiting Regulations, para. 76.

2. For definitions of *India* and *colony*, see s. 190 (21) (23).

3. It is open to doubt whether a justice of the peace can, in this matter, act when outside the county or borough for which he is justice.

In Scotland a man is not to be taken for attestation before a magistrate who is not a justice of the peace.

4. The persons named in this section are authorised to attest under s. 80, but not to enlist ("recruit") (s. 80 (1)), or to re-engage (see s. 84 (3)).

*Special Provisions as to Persons to be enlisted.*

Enlistment  
of aliens,  
negroes, &c.

95.—(1) Any person who is for the time being an alien<sup>1</sup> may, if His Majesty thinks fit to signify his consent through a Secretary of State, be enlisted in His Majesty's regular forces, so however, that the number of aliens serving together at any one time in any

corps of the regular forces shall not exceed the proportion of one Part II.  
alien to every fifty British subjects, and that an alien so enlisted  
shall not be capable of holding any higher rank in His Majesty's ss. 95, 96.  
regular forces than that of a warrant officer or non-commissioned  
officer.<sup>2</sup>

(2) Provided that notwithstanding the above provisions of this section any inhabitant of any British protectorate and any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted, shall while serving in His Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

#### NOTE.

1. "*For the time being*" an alien. A naturalised alien can, of course, enlist like any other British subject.

2. See Ch. X, paras. 28 and 29.

This section relates only to aliens enlisted under it, and prohibits their promotion to commissioned rank.

S. 3 of the Act of Settlement forbids an alien to enjoy any office or place of trust, but does not prevent honorary rank in the British Army being conferred upon an alien, whether or not such honorary rank is accompanied by a formal commission. Such a distinction is a mere matter of honour and dignity, and does not fall within the Act so long as the possessor does not by virtue of his rank or commission exercise any actual command or power, or draw any emoluments. An alien might, however, be employed under a civil contract to do special work with the forces, and then be given a honorary commission to give him *status*.

96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise:—

*Claims of  
masters to  
apprentices.*

- (1) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice, a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect:
- (2) A court of summary jurisdiction<sup>1</sup> within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master,<sup>2</sup> but if satisfied that the apprentice stated on his attestation that he was not an apprentice, may, and if required by or on behalf of the said commanding officer, shall, try the apprentice for the offence of making such false statement,<sup>3</sup> and if need be may adjourn the case for the purpose:
- (3) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from His Majesty's service:
- (4) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound:

- Part II.** (5) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice.
- ss. 96-99.**

**NOTE.**

1. *Court of summary jurisdiction.* See ss. 166-169 and 190 (34)-(36).
2. See K.R. 370 (iv) for discharge procedure.
3. *Offence of making such false statement.* As to this, see s. 99.

Application of apprentice provisions to indentured labourers.

**97.** The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified.

*Offences as to Enlistment.*

Penalty on unlawful recruiting.

**98.** If a person without due authority—

- (1) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for His Majesty's regular forces, or in relation to recruits for such forces ; or
- (2) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces ; or
- (3) Receives any person under any such advertisement as aforesaid ; or
- (4) Directly or indirectly interferes with the recruiting service of such forces,

he shall be liable on summary conviction<sup>1</sup> to a fine not exceeding twenty pounds.

**NOTE.**

1. *On summary conviction, i.e., on conviction before a court of summary jurisdiction in the manner provided by the Summary Jurisdiction Acts.* See s. 190 (34) and (35) and ss. 166 to 169.

Recruits punishable for false answers.

**99.—(1)** If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice<sup>1</sup> before whom he appears for the purpose of being attested, he shall be liable on summary conviction<sup>2</sup> to be imprisoned with or without hard labour for any period not exceeding three months.

(2) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority,<sup>3</sup> to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.<sup>4</sup>

**NOTE.**

1. "Justice" includes persons lawfully exercising authority under s. 94.
2. *On summary conviction.* See note to s. 98.

3. *Competent military authority.* See s. 101. and R.P. 128.

4. The effect of the section is that, if the offender has become subject to the Act, he can be prosecuted either before a court-martial or before a court of summary jurisdiction; but if he has not become so subject, then only before the latter.

The offender may be tried and punished in any place where he may for the time being happen to be (s. 159 as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed, that is to say, where he made the false answer.

A court of summary jurisdiction cannot entertain a charge of false answer on attestation when the answer was made more than six months before the time when proceedings are commenced. See Summary Jurisdiction Act, 1848, s. 11.

Under 6 Edw. VII, c. 5, s. 2, a person who uses, or gives for use, on enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds.

See K.R. 370 (iii) for discharge procedure.

Part II.

ss.  
99, 100.

### *Miscellaneous as to Enlistment.*

100.—(1) Where a person after his attestation on his enlistment or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act, and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not, until such person is discharged in pursuance of his claim, affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

Validity of  
attestation  
and enlist-  
ment or re-  
engagement.

(2) Where a person is in pay as a soldier of the regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim, he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.<sup>1</sup>

(3) Where a person claims his discharge on the ground that he has not been attested or re-engaged, or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority,<sup>2</sup> who shall as soon as practicable submit it to the Army Council, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

### NOTE.

1. The effect of this section is that if a person receives pay as a soldier of the regular forces without having been duly attested and enlisted, or without having been duly re-engaged (as the case may be), he may be treated for all purposes as subject to military law until he is formally discharged. It thus prevents a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or sentenced for an offence.

If there was no attestation and enlistment (or no re-engagement), he may claim his discharge at any time.

If there was an attestation and enlistment (or a re-engagement), but only an irregular or illegal one, he may similarly claim his discharge at any time until

**Part II.** he has received pay "during three months." After that date his attestation and enlistment (or re-engagement) is presumed conclusively to be regular and valid.

100, 101. 2. *Competent military authority.* See s. 101, and R.P. 128.

**Definition for purposes of Part Two of competent military authority and reserve.** 101.—(1) Any act authorised or required by this part of this Act to be done by, to, or before the competent military authority, may be done by, to, or before the Army Council, or any officer prescribed<sup>1</sup> in that behalf.

(2) For the purposes of this part of this Act the expression "reserve" means the first class of the army reserve force.<sup>2</sup>

**NOTE.**

1. *Prescribed.* See R.P. 128.

2. The expression "army reserve force" means the army reserve under the Reserve Forces Act, 1892 (45 & 46 Vict., c. 48), s. 28: see Ch. XI, para. 17 *et seq.*

**Part III.**

**PART III.**

102, 103. **BILLETING AND IMPRESSMENT OF CARRIAGES, &c.**

[*This part of the Act does not apply to the Channel Islands and the Isle of Man (s. 187), or the Irish Free State (see note 10 to s. 190).*]

*Billeting of Officers, Soldiers, and Women.*

**Suspension of** 102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

3 Chas. I,  
c. 1;  
31 Chas. 2,  
c. 1.  
6 Anne (I.),  
c. 14, as to  
billeting.

**NOTE.**

The Acts suspended by this section are those referred to in the marginal note to this section. See as to billeting generally, Ch. IX, para. 139, *et seq.*

**Obligation of constable to provide billets for officers, soldiers, and horses.**

103.<sup>1</sup>—(1) Every constable<sup>2</sup> for the time being in charge at any place<sup>3</sup> in the United Kingdom mentioned in the route<sup>4</sup> issued to the commanding officer of any portion of His Majesty's regular forces<sup>5</sup> shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses<sup>6</sup> and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

(2) A route for the purposes of this part of this Act shall be issued under the authority of His Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Army Council may from time to time order in that behalf.

(3) A route purporting to be issued and signed as required by Part III. this section shall be evidence until the contrary is proved<sup>7</sup> of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

ss.  
103, 104.

## NOTE.

1. See as to billeting generally, Ch. IX, para. 139, *et seq.*
2. *Constable.* See ss. 108 (4), 120 and 190 (38). For offences by constables in relation to billeting, see s. 109; and for offences by keepers of victualling houses, see s. 110.
3. As to adding places to, or omitting them from, the route, see s. 108 (6). As to the area within which billets are to be found, see s. 108 (4), (6).
4. The power to billet on a route depends on the existence of a route; when the forces have arrived at their destination, billets, in the ordinary course, should no longer be occupied. If in exceptional circumstances it seems essential to continue to occupy them for a few days for military reasons, *e.g.*, pending the preparation of proper quarters, &c., they should be evacuated as soon as possible.
5. The necessary modifications in the application of this section to the Territorial Army are provided in s. 181 (4); and as regards the application of the provisions of this Act as to billeting in cases of "emergency," see s. 108A.
6. Except in an "emergency" (as to which see s. 108A), the liability to provide billets is confined to occupiers of "victualling houses" as defined in s. 104 (1).
7. This sub-section provides that a route shall, so to speak, prove itself, *i.e.*, that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed.

104.—(1) The provisions of this part of this Act with respect to victualling houses shall extend to all inns or hotels (whether licensed or otherwise), livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

Liability to  
provide  
billets.

- (2) Provided that an officer or soldier shall not be billeted<sup>1</sup>—
  - (a) In any private house; nor
  - (b) In any canteen held or occupied under the authority of a Secretary of State; nor
  - (c) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor; nor
  - (d) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tipping in such house; nor
  - (e) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and

## Part III.

strong waters, so as such shopkeeper does not permit tipping in such house ; nor

ss.  
104-106.

- (f) In a house of a person licensed only to sell beer or cider not to be consumed on the premises ; nor
- (g) In the house of residence of any foreign consul duly accredited as such.

## NOTE.

1. In cases of "emergency" under s. 108A, billets may be demanded of the occupiers of all public buildings (as defined in s. 108A (5)), dwelling houses, warehouses, barns and stables.

Officers,  
soldiers,  
and horses  
entitled to be  
billeted

105.—(1) All officers and soldiers of His Majesty's regular forces;<sup>1</sup> and

- (2) All horses belonging to His Majesty's regular forces ; and
- (3) All horses belonging to the officers of such forces for which forage is for the time being allowed by His Majesty's regulations,

shall be entitled to be billeted.

## NOTE.

1. As to the Territorial Army, see s. 181 (3) (4). In cases of "emergency," women enrolled for employment by the Army Council can be billeted under s. 108A (7).

As regards offences by officers and soldiers in connection with billeting, see ss. 30, 111 and 121.

Accommo-  
dation and  
payment on  
bill

106.—(1) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following, that is to say, lodging and attendance for the officer and lodging, attendance, and food for the soldier ; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act.<sup>1</sup>

(2) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise,<sup>2</sup> to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable<sup>3</sup> issuing the billets, he shall be relieved from providing the same in his victualling house.

(3) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.<sup>1</sup>

(4) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command and his or their horses (if any) have been billeted.



(5) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to the Army Council, who shall forthwith cause the amount named in such account as due to be paid. Part III.  
—  
ss.  
106-108.

## NOTE.

1. The details respecting the food, forage and accommodation to be furnished are contained in the second schedule: the prices to be paid are contained in the Army and Air Force (Annual) Act for each year.

2. This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability.

3. The constable is made judge of the sufficiency of the substituted accommodation.

107.—(1) The police authority<sup>1</sup> for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.<sup>2</sup> Annual list  
of keepers of  
victualling  
houses liable  
to billets.

(2) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

## NOTE.

1. *Police authority.* See definition in s. 190 (39). See also s. 120.

2. The list merely determines the proportion in which the billets are to be distributed among the keepers of victualling houses, and does not relieve them from their liability to find accommodation for any number for whom quarters are required. *Sharvatt v. Scotney*, L.R. (1892) 2 Q.B. 479.

108. The following regulations shall be observed with respect to billeting in pursuance of this Act; that is to say,— Regulations  
as to grant  
of billets.

(1) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted:

(2) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer:

(3) If a keeper of a victualling house feels aggrieved by having an undue proportion<sup>1</sup> of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice<sup>2</sup> may complain to a court of summary jurisdiction,<sup>3</sup> and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just:

- Part III. (4) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses :
- ss.  
106, 108A.
- (5) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable :
- (6) A justice of the peace on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route :
- (7) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

## NOTE.

1. This appeal, like that given by s. 107 (2), is only against the *proportion*. The innkeepers of the place must take in somehow, either in their own houses or by "boarding out," all the men requiring billets. (See *Sharratt v. Scooney* in note 2 to s. 107.)

2. In the absence of a constable, a justice may make out billets (s. 120 (1), (2)).

3. *Court of summary jurisdiction*. See definition in s. 190 (35).

**Billeting in cases of emergency.**

108A.—(1) His Majesty by Order distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant<sup>1</sup> by a like Order, signified by the Chief Secretary or Under-Secretary<sup>2</sup>, may authorise any general or field officer commanding any part of His Majesty's forces in any military district or place in the United Kingdom, to issue a billeting requisition under this section.<sup>3</sup>

(2) Any officer so authorised<sup>4</sup> may issue a billeting requisition under his hand reciting the said Order and requiring chief officers of police<sup>5</sup> to provide billets in such places and for such number of officers and soldiers, and their horses, and for such period, as may be specified in the requisition.

(3) The provisions of this Act as to billeting shall apply to billeting under such a requisition as if for references therein to a route there were substituted references to such a requisition, subject, however, to the following modifications :

- (a) The occupiers<sup>6</sup> of all public buildings, dwelling-houses, warehouses, barns, and stables shall, as well as the keepers of victualling houses, be liable to billets, and the said provisions shall apply as if references to victualling houses and the keepers of victualling houses included references to such public buildings, dwelling-houses, warehouses, barns, and stables, and the occupiers thereof :

- (b) The powers and duties conferred or imposed on constables shall be exercised and performed by the chief officers of police, and accordingly for references to constables in the said provisions there shall be substituted references to the chief officers of police, and for the reference to a justice of the peace in subsection (7) of section one hundred and eight there shall be substituted a reference to a court of summary jurisdiction, but a chief officer of police in selecting the persons required to provide billets, and in determining the number of officers and soldiers to be billeted on any person shall, so far as practicable, have regard to the convenience of the several occupiers, and shall act in accordance with any general instructions which may have been issued by the police authority: <sup>s. 108A.</sup>
- (c) The prices to be paid to an occupier other than the keeper of a victualling house for accommodation furnished, and food and fodder supplied by him shall be such as may be fixed by regulations made by the Army Council with the consent of the Treasury:
- (d) Subsection (2) of section one hundred and three (which defines a route), paragraph (6) of section one hundred and eight (which relates to the power of a justice to vary a route) and so much of paragraph (2) of Part I. of the Second Schedule to this Act as limits the period during which meals are required to be furnished, and paragraph (2) of Part II of that Schedule (which requires billets to be made out to the less distant victualling houses) shall not apply.

(4) Any regulations as to prices so made shall be laid before each House of Parliament as soon as may be after they are made, and if within forty days after they have been so laid either House presents an address to His Majesty praying that any such regulations may be annulled, His Majesty may thereupon by Order in Council annul the same, and the regulations so annulled shall thenceforth become void without prejudice to anything done thereunder in the meantime.

(5) For the purposes of this section—

The expression " public building " includes any building wholly or partially provided or maintained out of the rates, and any building to which the public habitually have access, whether on payment or otherwise;

The expression " chief officer of police "

- (a) As respects the city of London, means the Commissioner of City Police, and elsewhere in England has the same meaning as in the Police Act, 1890;
- (b) In Scotland has the same meaning as in the Police (Scotland) Act, 1890;
- (c) As respects the police district of Dublin metropolis, means the Chief Commissioner of Police for that district, and elsewhere means a county inspector of the Royal Irish Constabulary.'

**Part III.** In the case of unoccupied premises this section shall apply as if the owner were the occupier thereof.

**s. 108A.**

(6) Compensation shall be paid by the Army Council out of money voted by Parliament for Army services in respect of any damage caused by any officer or soldier billeted under this section to the premises in which he is billeted, and the amount of such compensation shall in the event of disagreement be determined—

(a) In England by arbitration under the Arbitration Act, 1889 ;

(b) In Scotland in the same manner as a question of disputed compensation under subsection (10) of section twenty-five of the Local Government (Scotland) Act, 1894 ;

(c) In Ireland<sup>7</sup> by arbitration under the Common Law Procedure Amendment Act (Ireland), 1856, as amended by any subsequent enactment.

(7) The provisions of this Act as to billeting shall, whilst any Order of His Majesty under this section is in force, apply to women who are enrolled for employment by the Army Council as they apply to soldiers ; and for the purpose of those provisions as so applied officers of any troops with whom the women to be billeted are employed and the officer commanding those troops shall be deemed in relation to such women to be their officers and commanding officer ; and if any such woman is guilty of an offence in relation to billeting mentioned in section thirty of this Act she shall be punishable on summary conviction in manner provided by subsection (2) of section one hundred and eleven of this Act.

#### NOTE.

1. *Lord Lieutenant.* The Irish Free State (Consequential Provisions) Act, 1922 (13 Geo. V, c. 2, sess. 2) provides (First Schedule, para. 1 (1)) that in any enactment references to the Lord Lieutenant shall, in their application to Northern Ireland, be construed as references to the Governor of Northern Ireland. This part of the Act does not apply to the Irish Free State.

2. *Chief Secretary or Under-Secretary.* The Government of Ireland (Adaptation of Enactments) (No. 3) Order, 1922, provides (para. 41) that the reference to the Chief Secretary in this section shall be construed as a reference to a Secretary of State or an officer appointed by a Secretary of State to act for the purpose, and that the reference to the Under-Secretary shall not apply. This part of the Act does not apply to the Irish Free State.

3. This section extends the power of billeting in cases of "emergency," when men of the Regular or Territorial Army may be billeted not only in the places mentioned in s. 104 (1) but also in public buildings, dwelling houses, warehouses, barns and stables.

4. The officers authorised to issue billeting requisitions will include divisional, brigade and battalion commanders of the Territorial Army.

5. The duty of selecting the houses in which the men, &c., are to be billeted is to be performed by the chief officer of the police, who, however, is required to act under the instructions of the police authority, that is to say, in England (elsewhere than in the metropolitan police district), the standing joint committees in counties, and the watch committees in boroughs having a separate police force (see also Ch. IX, para. 152).

6. *Occupiers.* The owner of an unoccupied building may be treated as occupier. (See subs. (5)).

7. *Royal Irish Constabulary.* The Constabulary Act (Northern Ireland), 1922 (12 & 13 Geo. V c. 8), provides (section 1):—

"(4) Where any enactment or other provision of law provides for the exercise of any power by, or imposes any duty on, any officer or constable of the Royal Irish Constabulary, that enactment or provision shall, subject as in this Act provided, have effect in Northern Ireland as if the said power were exercisable

by, or the said duty were imposed on, the officer or constable, by whatever title designated, of the Royal Ulster Constabulary having corresponding rank and functions, and references in any such enactment or provision to any officer or constable of the Royal Irish Constabulary shall be construed accordingly." Part III.  
—  
ss.  
108A-111

This part of the Act does not apply to the Irish Free State.

### *Offences in relation to Billeting.*

**109.** If a constable commits any of the offences following; that Offences by  
constables  
is to say,

- (1) Billets any officer, soldier, or horse, on any person not liable to billets without the consent of such person; or
- (2) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable, or from his liability to billets, or from any part of such liability; or
- (3) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted; or
- (4) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted;

he shall, on summary conviction,<sup>1</sup> be liable to a fine of not less than forty shillings and not exceeding ten pounds.

#### NOTE.

1. On summary conviction. See note to s. 98.

**110.** If a keeper of a victualling house<sup>1</sup> commits any of the offences following; that is to say, Offences by  
keepers of  
victualling  
houses.

- (1) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or
- (2) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable, or from his liability to billets, or any part of such liability; or
- (3) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction,<sup>2</sup> be liable to a fine of not less than forty shillings and not exceeding five pounds.

#### NOTE.

1. When an "emergency" Order under s. 108A is in force, these penal provisions apply to all persons liable to provide billets.
2. On summary conviction. See note to s. 98.

**111.—**(1) If any officer quarters or causes to be billeted any officer, soldier, or horse, otherwise than is allowed by this Act upon any person, he shall be guilty of a misdemeanor. Offences by  
officers or  
soldiers.

(2) If any officer or soldier commits any offence<sup>1</sup> in relation to billeting for which he is liable to be punished under Part One of

Part III. this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved, he shall, upon summary conviction, be liable to a fine not exceeding ss. 111, 112. fifty pounds.<sup>2</sup>

(3) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to the Army Council.

#### NOTE.

1. For other offences by officers and soldiers in connection with billeting, see s. 30.

2. This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s. 30, except those for which the injured person can obtain compensation through a court of summary jurisdiction under s. 119.

Under s. 108A (7) women billeted may be tried under this subsection for offences in connection with billeting.

#### *Impressment of Carriages, &c.*

Supply of carriages, &c., for regimental baggage and stores on the march.

112.—(1) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of His Majesty's regular forces<sup>1</sup> shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route,<sup>2</sup> issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages<sup>3</sup>, animals, and drivers as are stated to be required for the purpose<sup>4</sup> of moving the regimental<sup>5</sup> baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

(2) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting.<sup>2</sup>

(3) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4) The warrant ordering carriages, animals and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

(6) A fee of one shilling and no more shall be paid for the Part III.  
warrant by the officer or non-commissioned officer applying for  
the same and shall be paid to the clerk of the justice.

(7) Where a carriage has one or more alternative bodies the  
carriage may be demanded with any one or more bodies, and where  
a carriage is used for haulage the carriage may be demanded  
with or without the vehicles ordinarily hauled.<sup>6</sup> 112, 113.

#### NOTE.

1. See generally as to impressment of carriages, Ch. IX, para. 156 *et seq.*  
As to the application of this section to the Territorial Army, see s. 181 (3)  
and (4).

As to penalties for failure to comply with requirements, and for other  
offences against the Act, see ss. 31, 116-118, 121.

2. The same route is in practice used to obtain both billets and carriages.

3. See definition of "carriage" in s. 190 (40A). Persons who are required  
to furnish carriages and horses for the purpose of moving regimental baggage  
and stores can be required to furnish also the harness ordinarily used with  
them.

4. Except in cases of "emergency", which are provided for by s. 115,  
carriages, &c., can only be impressed for this purpose, and use of them for  
any other purpose is penal (s. 31 (5)).

5. For definition of "regimental" see s. 190 (17).

6. The power to impress a mechanically propelled vehicle relates to a  
complete vehicle, but where a vehicle has alternative bodies any one or more  
bodies can be taken at the discretion of the requisitioning authority. This  
does not preclude the taking of a vehicle to which a carrying structure is not  
fitted, but which is in other respects a complete vehicle. This is of particular  
application in the case of impressment for purchase under s. 115 (7).

113.<sup>1</sup>—(1) There shall be paid in respect of carriages and animals furnished in pursuance of the foregoing section of this Act the rates of payment commonly recognised or generally prevailing in the district at the time of impressment,<sup>2</sup> and if any difference arises respecting the amount payable, the amount shall be such as may be fixed by a certificate of a county court judge<sup>3</sup> having jurisdiction in any place in which the carriage or animal was furnished or through which it travelled.

Payment  
for and regu-  
lations as to  
carriages,  
animals, &c.

(2) For the purposes of fixing such amount the provisions set out in the Sixth Schedule to this Act shall have effect.

(3) Where a sum has been paid or tendered by or on behalf of the Army Council under this section, that sum shall be deemed to be the amount due unless within three weeks of the date of the payment or tender an application is made to a county court judge for a certificate or formal notification is made to the Army Council that application for the certificate of a county court judge will be made in the event of a settlement not otherwise being arrived at. If such formal notification is made, the three weeks mentioned in this paragraph shall not be deemed to have commenced to run until the Army Council notifies the claimant that no further payment will be made beyond the amount tendered except under a certificate of a county court judge.

When formal notification is made to the Army Council, the sum already tendered may be accepted without prejudice to the right of applying to the county court judge<sup>4</sup>

Part III. (4) The possessor of any carriage or animal at the time of impressment shall be deemed to be the owner for the purposes of the procedure of impressment where it is not otherwise declared as. 113, 114. at the time, and payment made to the possessor shall be deemed to be payment to the owner. In the event of the property being vested in another person or persons, the possessor shall notify all others interested in the property and adjust the amount received in due proportion. In the event of any difference arising, the amounts shall be apportioned on a certificate of a county court judge as aforesaid.<sup>5</sup>

(5) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one third part of such payment shall in each case, if required, be made before the carriage is loaded ; and such payments shall be made, if required, in the presence of a justice or constable.

(6) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to the Army Council, who shall forthwith cause the amount named therein to be paid to such owner or driver.

#### NOTE.

1. The A. & A. F. (A.) Act, 1925, amended the provisions of subs. (1)-(4) of this section.

2. This subsection provides for the payment of the appropriate local rates for existing forms of transport in lieu of the rates laid down in the former Third Schedule which is repealed. It relates to impressment for hire.

3. *County court judge.* For definition as respects Scotland and Ireland, see s. 190 (37).

4. This subsection gives a right of appeal to a county court judge to fix the amount due in the case of impressment for hire in the same manner as hitherto applied to purchase. It provides for the suspension of the three weeks' limit for appeal action without prejudice to the owner's rights, pending attempted settlement by negotiation. The provisions of this subsection by s. 115 (3) are made applicable equally to impressment in emergency whether for hire or for purchase ; the former subs. (4) of s. 115 was in consequence repealed by A. & A. F. (A.) Act, 1925.

5. This subsection removes the onus hitherto held to have rested on the requisitioning authority of ascertaining the extent of any rights of property in the article requisitioned, which may be vested in parties other than the possessor for the time being. It provides for the settlement of any dispute as to the division of the amount received in payment, by reference of the parties concerned to a county court judge, without the intervention of the requisitioning authority.

Annual list  
of persons  
liable to  
supply  
carriages and  
animals.

114.—(1) The authority hereinafter mentioned for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons ; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant



shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant. Part III.  
—  
s. 114.

(1A) For the purpose of assisting the authority hereinafter mentioned in the preparation of such list as aforesaid, any proper officer authorised in that behalf by the authority shall be entitled at all reasonable times to enter any premises in which he has reason to believe that any carriages or animals are kept, and to inspect any carriages or animals which may be found therein.

In this provision the expression "proper officer" means any officer or person of such rank, class, or description as may be specified in an order of the Army Council made for the purpose.

(1B) With respect to horses, the following provisions shall have effect—

- (a) it shall be the duty of the owner of any horse, and the occupier of any premises where horses are kept, to furnish, if so required, to the authority hereinafter mentioned before such date in each year as may be prescribed a return specifying the number of horses belonging to him or kept on his premises, and giving with respect to every horse such details as may be so prescribed; he shall also afford all reasonable facilities for enabling any horse belonging to him or kept on his premises to be inspected and examined as and when required by the said authority; if any person fails to comply with any of the requirements of this paragraph, he shall be liable on summary conviction for each offence to a fine not exceeding fifty pounds;
- (b) the Army Council may, for the purposes of this subsection, make regulations prescribing anything which under this subsection is to be prescribed, and prescribing the forms to be used, and generally for the purpose of carrying this subsection into effect;
- (c) regulations made by the Army Council may provide for excepting from the provisions of this subsection horses of any class or description specified in the regulations.

(2) The authority hereinafter mentioned shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

(3) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

(3A) If any officer is obstructed in the exercise of his powers under this section, a justice of the peace may, if satisfied by information on oath that the officer has been so obstructed, issue a search warrant authorising the constable named therein, accompanied

Part III. by the officer, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening, and to inspect any carriages or animals that may be found therein.

—  
ss.  
114, 115.

(4) The authority for the purposes of this section shall be the Army Council or any authority or persons to whom the Army Council may delegate their powers under this section.

#### NOTE.

The procedure with regard to the annual classification of horses is fully dealt with in *Remount Regulations, 1924*, and in the pamphlet "*The Imprecment of Horses and Horse Drawn Vehicles in Time of National Emergency.*"

Supply of  
carriages,  
vessels, &c.,  
in case of  
emergency:

115.—(1) His Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant<sup>1</sup> by a like order, signified by the Chief Secretary or Under Secretary<sup>1</sup>, may authorise any general or field officer commanding His Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency).

(2) The officer so authorised may issue a requisition of emergency under his hand<sup>2</sup> reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river, and also of food, forage, and stores of every description.<sup>3</sup>

(3) A justice of the peace, on demand by an officer of the portion of His Majesty's forces mentioned in a requisition of emergency, or by an officer of the Army Council authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, vessels, food, forage and stores as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels, food, forage and stores, in like manner in all respects as they apply to carriages.

(3A) A requisition of emergency may authorise any officer mentioned therein to require any carriages and horses furnished in pursuance of this section to be delivered at such place (not being more than one hundred miles in the case of a motor car or other locomotive, and not being more than ten miles in the case

of any other carriage or horse, from the premises of the owner) and at such time as may be specified by any officer mentioned in the requisition, and in such case it shall be the duty of a constable executing a warrant issued by a justice of the peace under this section upon the demand of an officer producing the requisition of emergency to insert in his order such time and place for delivery of any vehicle or horse to which the order relates as may be specified by such officer, and the obligation of owners to furnish carriages and horses shall include an obligation to deliver the carriages and horses at such place and time as may be specified in such order notwithstanding that a receipt may be given by the officer mentioned in the warrant at the time of impressment, and the provisions of this Act shall have effect as if references therein to the furnishing of carriages and horses included, as respects any such carriage or horse as aforesaid, delivery at such time and place as aforesaid. The carriages or horses mentioned in the order shall not be deemed to have been furnished until proper delivery has been made to the place and at the time stated in the order.

Part III.

—  
c. 115.

(4) The sum to be paid for any article shall be deemed to have been tendered when a formal receipt for the article setting forth the amount is handed to the owner or his representative; but the property in a carriage or animal impressed shall be vested in the owner until such time as the carriage or animal has been duly furnished at the place and time stipulated.<sup>4</sup>

(5) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6) A requisition of emergency, purported to be issued in pursuance of this section and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of His Majesty's forces or of the Army Council shall be a sufficient authority to such officer to demand carriages, animals, vessels, food, forage and stores in pursuance of this section, and when produced by such officer shall be conclusive evidence<sup>5</sup> to a justice and constable of the authority of such officer to make such demand in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same.

(7) Whenever a proclamation ordering the Army Reserve to be called out on permanent service is in force, the order of His Majesty authorising an officer<sup>6</sup> to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, vessels, food, forage and stores for the purpose of being purchased, as well as of being hired, on behalf of the Crown.

Part III. (8) Where a justice, on demand by an officer and on production of a requisition of emergency, has issued his warrant for the provision of any articles, and any person ordered in pursuance of such warrant to furnish any such article refuses or neglects to furnish the same according to the order, then, if a proclamation ordering the Army Reserve to be called out on permanent service is in force, the said officer may seize (and if need be by force) the article requisitioned, and may use the same in like manner as if it had been furnished in pursuance of the order, but the said person shall be entitled to payment for the same in like manner as if he had duly furnished the same according to the order.<sup>7</sup>

s. 115.

(9) The Army Council may, by regulations under the Territorial and Reserve Forces Act, 1907, assign to county associations established under that Act the duty of furnishing, in accordance with the directions of the Army Council, such carriages, animals, vessels, food, forage and stores as may be required on mobilisation for the regular or auxiliary forces, or any part thereof, and where such regulations are made an officer of a county association shall have the same powers as are by this section conferred on an officer of the Army Council.

(10) A requisition of emergency issued under this section may prohibit, during such period and to such extent as may be specified in the requisition, the sale and purchase of horses or carriages or the sale and purchase of horses or carriages of any class or description so specified to or by any person other than a person appointed by the Army Council to purchase horses or carriages; and if any person sells or purchases or is concerned in the sale or purchase of a horse or carriage in contravention of such prohibition, he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such imprisonment and fine.<sup>8</sup>

(11) The power conferred by this section to issue a requisition of emergency shall include power to issue a requisition of emergency revoking, amending or varying a requisition of emergency previously issued.

#### NOTE.

1. *Lord Lieutenant....Chief Secretary or Under-Secretary.* See notes 1 and 2 to s. 106A.

2. See R.P. 131, under which requisitions of emergency may be signed on behalf of a general officer commanding by a deputy-assistant director of remounts, or an assistant (or deputy-assistant) director of supplies and transport.

3. Carriages and horses of every description (including motor cars, &c.), barges and other vessels used in inland navigation, and food, forage and stores of every description may, in case of "emergency," be impressed under this section for any military purpose mentioned in the requisition; carriages, &c., may be impressed for the conveyance of persons as well as of baggage. The expression "horses" includes mules and other beasts of burden or draught, s. 190 (40). For definition of "carriage," see s. 190 (40A). Bicycles may be impressed under this section.

As in the case of impressment under s. 112, the power to impress carriages, animals and vessels extends to any harness, saddlery or tackle ordinarily used. The power to impress mechanically propelled vehicles extends to their ordinary accessories, but not to spare parts not ordinarily carried on the vehicle.

4. This subsection fixes the moment of tender in order to determine the day from which the three weeks shall commence to run, within which notice of appeal may be lodged under s. 113 (3).

This subsection and sub. (3A) make it clear that the requisition has not been complied with until the article is furnished at the place appointed, and that the property in the carriage, &c., and consequently any risks attaching thereto, remain with the owner until formal delivery. Part III.

5. The requisition of emergency is made to prove itself; see note 7 to s. 103. ss.

6. The actual requisitioning for purchase of horses and carriages, as defined in s. 190 (40), (40A), will normally be carried out by officers detailed for the purpose by the Army Council. 115-118.

7. Every person who has articles suitable for the purpose is liable to furnish them if properly called upon to do so.

8. This subsection enables the requisitioning authority to prohibit, if necessary, the trading in horses or carriages likely to be requisitioned, and thus prevent their removal from local jurisdiction or their speculative handling to the prejudice of the purchasing authority.

### *Offences in relation to the Impressment of Carriages, &c.*

#### 116. Any constable who—

Offences by  
constables.

- (1) Neglects or refuses to execute any warrant of a justice, requiring him to provide carriages, animals, vessels, food, forage or stores; or
- (2) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any such article; or
- (3) Orders any such article to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished,

shall, on summary conviction,<sup>1</sup> be liable to a fine of not less than twenty shillings nor more than twenty pounds.

#### NOTE.

1. On summary conviction. See notes to s. 98.

#### 117. A person ordered by any constable in pursuance of this Act to furnish any article who—

Offences by  
persons  
ordered to  
furnish  
carriages,  
animals,  
vessels, &c.

- (1) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or
- (2) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any article in pursuance of this Act; or
- (3) Does any act or thing by which the execution of any warrant or order for providing or furnishing any article is hindered,

shall, on summary conviction,<sup>1</sup> be liable to pay a fine of not less than forty shillings nor more than ten pounds.

#### NOTE.

1. On summary conviction. See notes to s. 98.

118.—(1) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy<sup>1</sup> is given by this part of this Act to the Offences by  
officers or  
soldiers.

Part III. person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

— ss. (2) A certificate of a conviction for an offence under this section 118-120. shall be transmitted by the court making such conviction to the Army Council.

#### NOTE.

1. *Any other remedy.* Viz., under s. 119. The provisions of s. 162, as to the adjustment of military and civil law, should also be borne in mind.

#### *Supplemental Provisions as to Billeting and Impressment of Carriages.*

Application to court of summary jurisdiction respecting sums due to keepers of victualling houses or owners of carriages, &c.

119.—(1) The following persons; that is to say,—

- (a) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or
- (b) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner of any article or the person in charge of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place only after first making due complaint, if practicable to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to the Army Council, who shall forthwith cause the amount due to be paid.

(2) Provided that the Army Council, if it appear to them that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

Provisions as to constables, police authorities, and justices.

120.—(1) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority;<sup>1</sup> and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a constable, and in such case every such person is in this part of this Act included in the expression "constable."

(2) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or

indirectly, be concerned, as a justice or constable, in the billeting Part III.  
of or appointing quarters for any officer or soldier or horse of the  
corps, or part of a corps, under his immediate command, and all  
warrants, acts, and things made, done, and appointed by such  
person for or concerning the same shall be void. ss. 120, 121.

## NOTE.

1. *Police authority.* See definition in s. 190 (30):

## 121. If any person—

- (1) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited; or
- (2) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, vessel, food, forage or stores, or to be entitled to be billeted, or to have his horse billeted, or personates or represents himself to be a person authorised to act in the purchase or hire, for the purposes of His Majesty's military service, of any carriage, animal, vessel, food, forage or stores; or
- (3) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

Presumptive  
claim for  
carriages,  
animals, &c.

he shall be liable, on summary conviction,<sup>1</sup> to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

## NOTE.

1. *On summary conviction.* See note to s. 98.

## PART IV.

## Part IV.

## GENERAL PROVISIONS.

## s. 122.

*Supplemental Provisions as to Courts-martial.*

122.—(1) His Majesty may, subject to the provisions of this Act, by any warrant or warrants<sup>1</sup> under His Sign Manual, in such form as His Majesty may from time to time direct, from time to time—

Royal war-  
rant re-  
quired for  
convening  
and confirm-  
ing general  
courts-  
martial.

- (a) Convene or authorise any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law; and
- (b) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command; and
- (c) Empower any qualified officer to delegate to any officer under his command, not below the degree of field officer, a

## Part IV;

s. 122,

general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law as are for the time being under or within the territorial limits of his command; and

- (d) Reserve for confirmation by His Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial; and
- (e) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer; and
- (f) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force.

Provided that where it appears to His Majesty that, in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2) The same officer may or may not be appointed convening and confirming officer.

(3) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to His Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5) Any warrant of His Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without His Majesty's dominions; it also includes the Lord Lieutenant of Ireland,<sup>a</sup> the Governor-General of India, and a Governor of any colony on whom the command of any part of His Majesty's forces may be conferred



by His Majesty;<sup>2</sup> it also includes, in the case of a body of His Majesty's military forces when serving beyond the seas, the officer not below the rank of field officer or corresponding rank commanding that body or the command within which they are serving, whether such officer is an officer of the navy, army, or air force.

ss.  
122, 123.

## NOTE.

1. See Ch. V, paras. 3-9 and 87-93.

For forms of court-martial warrants, see pp. 788-793.

When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him.

2. *Lord Lieutenant of Ireland.* The Irish Free State (Consequential Provisions) Act, 1922 (13 Geo. V c. 2, sess. 2), provides (First Schedule, para. 1 (1)) that in any enactment references to the Lord Lieutenant shall, in their application to Northern Ireland, be construed as references to the Governor of Northern Ireland. As regards the Irish Free State, see note 10 to s. 190.

3. Under this sub-section a governor of a colony can by warrant be authorised to convene, and confirm the findings and sentences of, general courts-martial, if he has had conferred upon him the command of any of His Majesty's forces. For the present the issue of general court-martial warrants has been restricted to governors of colonies in which there are no regular troops.

A governor to whom a general court-martial warrant is issued may convene and confirm general courts-martial within the territorial limits of the colony for the trial of offences committed against the Army Act by persons subject to that Act. For instance, if a force is raised in the colony under the Army Act, any offence committed against that Act by a member of such force while within the territorial limits of the colony may be tried by a court-martial—the court being convened and the proceedings confirmed under authority of the warrant issued to the governor. Or, again, when a force raised in the colony under a colonial enactment is serving for the time being solely under the Army Act, and not under the colonial enactment, offences against the Army Act may be dealt with by court-martial within the colony under the general court-martial warrant issued to the governor.

The governor cannot convene or confirm a court-martial held outside the territorial limits of the colony; but where troops who are subject to the Army Act are embarked in ships (not being ships commissioned by His Majesty) at ports in a colony where there are no regular troops for conveyance to a seat of war, the governor of that colony, if in possession of a general court-martial warrant, may issue a warrant, on A.F., A.5, to the officer commanding troops on board any such ship, if not below the rank of captain, empowering him to convene and confirm district courts-martial held for the trial of a person under his command who is subject to the Army Act. The warrant thus given (A.F. A.5) should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation when they come under the command of an officer of the regular forces having power to convene and confirm general courts-martial.

When the force is returning to the colony an officer of the regular forces having power to convene general courts-martial (usually the general officer commanding at the port of embarkation) will give to the officer commanding troops on board a ship (not being a ship commissioned by His Majesty), if he is not below the rank of captain, a warrant on A.F., A.5 for use during the voyage to the colony. This latter warrant will lapse as soon as the troops disembark in the colony.

123.—(1) Any officer or person authorised to convene general courts-martial may—

- (a) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law; and
- (b) Empower any person under his command not below the rank of captain<sup>1</sup> to convene a district court-martial<sup>2</sup> for the trial under this Act of any person under the command of such last-mentioned officer who is subject to military law;<sup>3</sup> and

Authority of officer empowered to convene general courts-martial required for convening and confirming district courts-martial.

Part IV. (c) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm<sup>4</sup> the finding and sentence of any district court-martial.<sup>3</sup>

ss.  
123, 124.

(2) The same officer may or may not be appointed convening and confirming officer under this section.

(3) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.<sup>1</sup>

(4) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may, or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.<sup>2</sup>

#### NOTE.

1. General officers commanding-in-chief may delegate the power of convening and confirming district courts-martial to the following officers :—

General officers commanding divisions, including Territorial Army divisional commanders;

General or other officers not below the rank of lieutenant-colonel, commanding brigades of the regular forces, and coast defence commanders.

The power may also be delegated, in case of necessity, to other officers not below the rank of lieutenant-colonel.

For forms of warrants, see pp. 788-793.

2. In granting a delegated warrant on A.F. A.5, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under the rank of lieutenant-colonel. But if such officer is the commanding officer of the person to be tried, or an officer who has investigated the case, he cannot (except on board ship or in such special cases as may be determined by the Army Council) afterwards act as convening officer in the same case, but must refer it to a superior authority; K.R. 617.

3. A warrant to convene and confirm district courts-martial is given to every O.C. the troops on board a transport or troop freight ship, not below the rank of captain. The warrant is operative for the period of the voyage only; K.R. 1091.

4. A commanding officer who has investigated a case in his capacity as commanding officer cannot subsequently act as confirming officer in any court-martial proceedings arising out of the same matter, except where he has authority to convene a court-martial under K.R. 617 (b). See K.R. 603, and note 2 above.

Right of person tried to copy of proceedings of court-martial.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years,<sup>1</sup> and in the case of any other court-martial within three years,<sup>1</sup> after the confirmation of the finding and sentence of the court or after his acquittal, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate,<sup>2</sup> not exceeding twopence for every folio of

seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner:<sup>2</sup> **Part IV.**

Provided that, when any person tried by court-martial dies within the above-mentioned periods of seven or three years, his next of kin shall, within a period of twelve months after his death, have the same right to obtain a copy of the proceedings. **ss. 124-126.**

#### NOTE.

1. Courts-martial proceedings will be kept for the period of time mentioned in this section and in R.P. 98, and the officer or person having the custody of them will give copies in accordance with this section and R.P. 99; see K.R. 670.

2. *Prescribed rate.* See R.P. 99. If an application is made for a copy of part only of the proceedings, it should be compiled with.

3. *Prescribed manner.* See R.P. 98.

**125.—(1)** Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.<sup>1</sup> **Summoning and privilege of witnesses at court-martial.**

(2) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest<sup>2</sup> as he would have if he were a witness before a superior court of civil jurisdiction.

(3) For the purposes of this and the next succeeding section, the expression "a court-martial" shall be deemed to include an officer taking a written summary of evidence<sup>3</sup> in accordance with rules of procedure made under this Act; and references to the president or members of a court-martial shall be construed as including references to such officer.

#### NOTE.

1. *Prescribed manner.* See R.P. 4 (H), 78. For form of summons, see R.P. App. II, p. 761.

2. *Privilege from arrest.* This privilege is from arrest on civil process while going to the place of trial, attending there, and returning home. There is no privilege from arrest on any criminal process. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

3. Civilian witnesses can be required to attend at the taking of a summary of evidence; but see R.P. 4 (G).

**126.—(1)** Where any person who is not subject to military law commits any of the following offences; that is to say, **Misconduct of civilians at court-martial.**

(a) On being duly summoned as a witness before a court-martial,<sup>1</sup> and after payment or tender of the reasonable expenses of his attendance, makes default in attending<sup>2</sup>; or

(b) Being in attendance as a witness<sup>1</sup>—

(i) Refuses to take an oath legally required by a court-martial to be taken; or

(ii) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

**Part IV.** (iii) Refuses to answer any question to which a court-martial may legally require an answer,

**s. 126.**

the president of the court-martial may certify<sup>3</sup> the offence of such person under his hand to any court of law<sup>4</sup> in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial<sup>1</sup> wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury,<sup>5</sup> or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3) Where a person not subject to military law is guilty of any contempt towards a court-martial,<sup>1</sup> by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify<sup>3</sup> the offence of such person, under his hand, to any court of law<sup>4</sup> in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

**NOTE.**

1. Sub. (3) of s. 125 makes the provisions of s. 126 applicable as regards civilian witnesses at the taking of a written summary of evidence.

2. A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom, nor if in the United Kingdom can he be compelled to attend a court-martial abroad.

3. The certificate of the president need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed. It will usually be desirable to make a formal application to the court to act upon the certificate.

4. The object of this subsection is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case, care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application should be made in England or Northern Ireland to the High Court of Justice or the County Court, and in Scotland to the Court of Session or the Sheriff Court.

5. *The offence of perjury.* See the Perjury Act, 1911 (1 & 2 Geo. V. c. 6).

127. A court-martial under this Act shall not, as respects Part IV. the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872,<sup>1</sup> or to any Act, law, or ordinance of any legislature<sup>2</sup> whatsoever other than the Parliament of the United Kingdom.

127-129  
Court-martial governed by English law only.

## NOTE.

1. A soldier, wherever he goes, carries with him the military law of his country, that is to say, the Army Act. The Indian Evidence Act, 1872, enacted that the law of evidence of that country should apply to courts-martial, and this was interpreted as applying to British courts-martial; consequently it was thought necessary to reverse the Indian enactment.

2. This section, however, applies only to courts-martial held directly under this Act. A colonial legislature, when applying the Act to its colonial military force, could modify the provisions of the section.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

Rules of evidence to be the same as in civil courts.

## NOTE.

As to evidence generally, see Ch. VI, and R.P. 73-86.

129. Whereas it is expedient to make provision respecting the conduct of counsel<sup>1</sup> when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act, be it therefore enacted as follows :—

Position of counsel at courts-martial.

- (1) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.
- (2) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.
- (3) A court-martial may, by order under the hand of the president, cause a counsel to be removed<sup>2</sup> from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section.

## Part IV

## NOTE:

- 1. See as to counsel, R.P. 88 to 93.  
 ss. 2. The removal of a counsel from the court could only be justified under very grave circumstances.

Provision in  
 cases of insane  
 persons.

130.—(1) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity<sup>1</sup> unfit to take his trial, the court shall find specially that fact; and such person shall be kept in custody in the prescribed manner<sup>2</sup> until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2) Where, on the trial by court-martial of a person charged with an offence, it appears that such person did the act or made the omission with which he is charged, but that he was insane at the time when he did or made the same, the court shall find specially that the accused was guilty of the act or omission charged but was insane at the time when he did the act or made the omission,<sup>3</sup> and such person shall be kept in custody in the prescribed manner<sup>2</sup> until the directions of His Majesty thereon are known.

(3) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure, in such place and in such manner as His Majesty thinks fit.

(4) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5) If a person imprisoned or undergoing detention by virtue of this Act<sup>4</sup> becomes insane, then, without prejudice to any other provision for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in India, the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a person confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such person to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or the colony, according as the person is confined in the United Kingdom,<sup>5</sup> India, or the colony, there to remain for the unexpired term of his imprisonment or detention, and, upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

## NOTE.

1. As to insanity in connection with responsibility for crime; see Ch. VII, para. 8.

2. *Prescribed manner.* See R.P. 57 (C) and note.

3. Where a court-martial find that an accused person did the act (or made the omission) which forms the subject of the charge or charges but was insane at the time when he did or made the same, such finding does not amount to a conviction, but means that on the facts proved the court would have found him guilty of the offence (offences) had it not been established to their satisfaction that the accused at the time was not responsible for his actions, and could not, therefore, have acted with a felonious or malicious mind (*Felstead*

v. *Res L.R.* [1914] A.C. 534). If such a finding is recorded in a case where a Part IV. soldier is charged with desertion—

- (i) no prior service is forfeited under ss. 79 or 84; and
  - (ii) no pay is forfeited in respect of the period during which the soldier is in custody awaiting trial, or for the actual period of absence.
4. *Imprisoned or undergoing detention by virtue of this Act.* This refers only to persons under sentence, and not to persons in custody awaiting trial.

5. This sub-section does not apply to persons undergoing imprisonment or detention in England. The removal of such persons to criminal lunatic asylums is the province of the Home Secretary; see the Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64).

ss.  
130-132.

#### *General Provisions as to Prisons and Detention Barracks.*

131.—(1) The governor of every prison in the United Kingdom shall receive and confine, until discharged or delivered over in due course of law—

Duty of governor of prison to receive prisoners, deserters and absentees without leave.

- (a) all prisoners<sup>1</sup> sent to such prison in pursuance of this Act, and
- (b) every person delivered into his custody as a deserter or absentee without leave<sup>1</sup> by any person conveying him under legal authority on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2) Every such governor shall also receive into his custody for a period not exceeding seven days any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.<sup>2</sup>

(3) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

#### NOTE.

1. See ss. 58-68 as to execution of sentences of penal servitude and imprisonment, and as to deserters or absentees without leave, see s. 154.

2. The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody. For form of order, see R.P., App. III, Form Q. A soldier in a military capacity cannot, whether under one or more warrants, be legally confined in a prison, police station, &c., for any period in excess of seven days under the provisions of this subsection.

132.—(1) It shall be lawful for a Secretary of State, and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison or detention barrack.<sup>1</sup>

Establishment and regulation of military prisons and detention barracks.

(2) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter and repeal rules<sup>2</sup>—

- (a) for the government, management, and regulation of military prisons and detention barracks; and
- (b) for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof; and

**Part IV.** (c) for the labour of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of portion of their sentence; and

—  
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132, 133.

(d) for the safe custody of such prisoners or soldiers and the maintenance of discipline among them, and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or soldiers :

Provided that—

- (i) such rules shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877 ; and
- (ii) all the regulations made under the Prison Act, 1898,<sup>a</sup> as to the duties of gaolers and medical officers and all regulations contained in the Coroners Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable.

The Secretary of State and Governor-General shall by rule under this subsection make special provision as to the treatment of military convicts under sentence for an offence committed on active service who, in pursuance of the provisions of this Act, are required to serve part of their sentences in a military prison.

(3) Rules under this section may apply to military prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(4) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made.

NOTE;

1. For definitions of *military prison* and *detention barrack*, see s. 68 (2) (d) and (e).

2. The orders for the interior management of military prisons and detention barracks are laid down in K.R. 715, *et seq.*, and Rules for Military Detention Barracks and Military Prisons.

3. *Regulations made under the Prison Act, 1898, &c.* See Local Prison Rules, 87-113; Rules for Convict Prisons, 1899, 157-175; and s. 3 of the Coroners Act, 1887.

Provisions as to military prisons and detention barracks on active service.

133. In any country in which operations against the enemy are being conducted,<sup>1</sup> the powers of a Secretary of State under the last foregoing section with respect to military prisons and detention barracks shall be exercisable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations contained in that section on the power of making rules as to the punishment of prisoners and soldiers undergoing detention and as to the severity of imprisonment and detention shall not apply: Provided that nothing in this section, or in



any rules made thereunder, shall authorise flogging or other corporal punishment to be inflicted for any offence.<sup>1</sup> **Part IV.**

## NOTE.

ss.  
133-136.

1. This section will not automatically cease to operate immediately upon operations ceasing. For a considerable time thereafter appointed prisons will continue to be military prisons, and prisoners will be detained in them until they can conveniently be removed.

2. This prohibition will apply to native personnel if subject *only* to the Army Act; but the local law under which they are recruited may make native formations liable to corporal punishment.

134.—(1) On all occasions of death by violence or attended with suspicious circumstances, in any military prison or detention barrack in India, an inquest shall be held to make inquiry into the cause of death. Inquests on deaths in military prisons and detention barracks in India.

(2) The commanding officer shall cause notice to be given to the nearest magistrate duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(3) Where there is no such magistrate available, the commanding officer shall convene a court of inquest which shall be convened and shall hold the inquest in such manner as may be prescribed.<sup>1</sup>

## NOTE.

1. *As may be prescribed.* See R.P. 127.

135. A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act and of deserters or absentees without leave from His Majesty's service, on payment of such sums as may be provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation<sup>1</sup> as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters and absentees without leave, and the provisions of section one hundred and thirty-one of this Act shall apply accordingly with this modification, that the reference to orders from a Secretary of State shall be construed as including orders from the Governor-General of India or the Governor of the colony as the case may be. Arrangements as to civil prisons in India or colony.

## NOTE.

1. *Same obligation.* See s. 131.

## Pay.

136. The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being, or by any law passed by the Governor-General of India in Council. Authorized deductions only to be made from pay.

**Part IV. 137.** The following penal deductions<sup>1</sup> may be made from the ordinary pay<sup>2</sup> due to an officer of the regular forces :—

**s. 137.**  
Penal stoppages from ordinary pay of officers.

- (1) All ordinary pay<sup>2</sup> due to an officer who absents himself without leave<sup>3</sup> or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been approved by the Army Council :
- (2) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by<sup>4</sup> the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence :
- (3) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay :
- (4) The sum required to make good any loss, damage, or destruction of public or regimental property<sup>5</sup> which, after due investigation, appears to the Army Council, or in the case of officers serving in India<sup>6</sup> the Governor-General, to have been occasioned by<sup>4</sup> any wrongful act or negligence on the part of the officer : Provided that where deductions have been so made from the pay of an officer serving in India the case shall, if he so require, be reported to the Secretary of State for India in Council, who may make such order thereon as he thinks fit.<sup>6</sup>

#### NOTE.

1. This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as for instance, in respect of rations. As to stoppages from pay, &c., to meet public claims, or regimental debts or claims, see P.W. 9 and 23.

2. *Ordinary pay.* The term "ordinary pay" of an officer for the purposes of this section means *all* military pay accruing to him by virtue of his rank, appointment, employment, and professional qualifications. It does not include what are commonly termed "allowances," nor does it include half-pay, retired pay or pension.

3. *All ordinary pay due to an officer who absents himself without leave.* This means all ordinary pay for the period of absence without leave. If pay has not been drawn during a period of absence without leave, such pay is forfeitable under para. (1); if pay has been drawn during a period of absence without leave, the issue constitutes an overissue due to an error as to facts, and the amount is recoverable as a public claim under the terms of the Pay Warrant.

4. *Occasioned by.* In order to put an officer under stoppages by way of penal deduction, under either para. (2) or para. (4), it is not sufficient to show merely that the loss, &c., was facilitated or made possible by his act or neglect. It is necessary to show that the loss was "occasioned by" in the sense of being the natural result of the conduct of the officer.

5. The words "of public or regimental property" qualify "loss" and "damage" as well as "destruction."

Furniture, &c., hired by the military authorities for military use may be treated as "public" or "regimental" property *pro tem*.

6. The effect of the words "or in the case of officers serving in India," &c., and the proviso to this paragraph, is that in India the Viceroy will decide whether or not any particular loss or damage was occasioned by an officer's wrongful act or negligence, but the officer will have a right of appeal to the Secretary of State for India in Council.

**138.** The following penal deductions<sup>1</sup> may be made from the Part IV. ordinary pay<sup>2</sup> due to a soldier of the regular forces :—

- s. 138.  
Penal stop-  
pages from  
ordinary pay  
of soldiers.
- (1)<sup>3</sup> All ordinary pay<sup>2</sup> for every day of absence<sup>4</sup> either on desertion<sup>5</sup> or without leave,<sup>6</sup> or as a prisoner of war<sup>7</sup>, and for every day of penal servitude or imprisonment<sup>8</sup> awarded by a civil court or court-martial, or, if he is on board one of His Majesty's ships, by the commanding officer of that ship, for every day of detention<sup>9</sup> or field punishment<sup>9</sup> awarded by a court-martial or by his commanding officer, and for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by his commanding officer :
  - (2) All ordinary pay<sup>2</sup> for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence<sup>10</sup> under this Act committed by him :
  - (3) The sum required to make good such compensation<sup>11</sup> for any expenses, loss,<sup>12</sup> damage, or destruction occasioned by<sup>12</sup> the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence or by the authority dealing summarily with a charge under section forty-seven of this Act, or if he is on board one of His Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order<sup>14</sup> under section seventy-three of this Act as may be awarded by that order or by any other order of a competent military authority under that section :<sup>15</sup>
  - (4) The sum required to make good such compensation<sup>16</sup> for any expenses caused by<sup>17</sup> him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessities or military decoration, or to any buildings or property<sup>18</sup>, as may be awarded by his commanding officer,<sup>19</sup> or by the authority dealing summarily with a charge under section forty-seven of this Act, or, in case he requires to be tried by a court-martial,<sup>20</sup> by that court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship<sup>15</sup> :
  - (4A) The share he is required to contribute as belonging to a unit towards compensation for barrack damage which after due investigation, to be held in the manner provided in the King's Regulations, appears to have been occasioned by the wilful act or negligence of a person or persons who cannot be identified, belonging to the unit, during the period while such unit was in occupation.

For the purposes of this paragraph, the expression "barrack damage" means damage to or loss or destruction of any premises in which soldiers are quartered or

## Part IV.

## s. 138.

billeted, or any appurtenances, fixtures, furniture or effects therein or appertaining thereto, and the expression "unit" includes any part of a unit :

- (5) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment :
- (6) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by His Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days :
- (7) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court ;<sup>21</sup> and
- (8) The sum required to pay any sum ordered by the Army Council, or any officer deputed by them for the purpose, to be paid as mentioned in this Act<sup>22</sup> for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child :

Provided that—

- (a) the total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day ;<sup>23</sup> and
- (b) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum ;<sup>24</sup> and
- (c) where a soldier who is sentenced or ordered in respect of an offence on active service to forfeit all ordinary pay is liable to any other penal deductions from pay, the sentence or order shall apply only to so much of his ordinary pay as remains after those other deductions have been made.<sup>25</sup>

## NOTE.

1. Note 1 to s. 137 applies to this section also.

2. *Ordinary pay.* The term "ordinary pay" of a soldier for the purposes of this section means *all* military pay accruing to him by virtue of his rank, appointment, employment, and proficiency. It does not include what are commonly termed "allowances," nor does it include pension.

3. The Pay Warrant makes provision as to the cases in which pay is to be forfeited under this para. (P.W. 879-885 ; see also Ch. IV, para. 34), and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture.

4. Section 140 (2) lays down six hours as the minimum period of absence that will count as a day of absence unless two conditions are fulfilled, first, that the absentee was prevented from fulfilling a military duty, and second, that the duty was thrown upon some other person.

Six clear hours must therefore elapse, and they must be reckoned **con- Part IV.**  
secutively.

The period of absence must be reckoned as from the time the absence commenced. **s. 138.**

If the period does not amount to six hours or upwards no pay is forfeited, except when the absence prevents the absentee from fulfilling some military duty which was thereby thrown on some other person, in which case the absentee would forfeit a day's pay no matter how short his absence might be.

If the absence amounts to six hours but not to twenty-four, one day's pay is forfeited whether the absence falls wholly on one natural day (reckoned from midnight to midnight) or partly on one natural day and partly on another.

If the period of absence exceeds twenty-four hours the number of days' pay forfeited will be the period in hours divided by twenty-four, any fraction over being counted as an additional day.

For instance, if a soldier absented himself from 9 p.m. on the 2nd October and returned at 2.45 a.m. on the 3rd October he would forfeit no pay as his absence did not amount to six hours or upwards, but if he was bound to go on guard or perform some other military duty and in consequence of his absence some other soldier had to go on guard or perform that duty then he would forfeit one day's pay.

Again, if a soldier absents himself at 10 p.m. on the 2nd October and remains absent until 4 a.m. on the 3rd October, he would forfeit one day's pay, and if he remained absent until 2 a.m. on the 10th October he would forfeit eight days' pay, for in the latter case he would be 172 hours absent, or seven full days of twenty-four hours each, and an additional period of four hours for which one day's pay would be forfeited, making eight days' pay in all.

In all cases the soldier must be found guilty of the absence, either by a court-martial or by his commanding officer (see R.P. 129), before forfeiture of pay for such absence can be enforced.

5. Under s. 73 (1) the competent military authority can order that the soldier shall forfeit his pay for every day in custody on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with.

6. Upon a charge of desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction (as it negatives "intention") and no forfeiture of pay results. See also note 4 to s. 79 and note 3 to s. 130.

7. Absence as a prisoner of war, however, does not cause a forfeiture of pay, unless a court of inquiry decide that the soldier was taken prisoner through neglect or misconduct on his own part; and at most only the balance of pay unissued at the date of rejoining is forfeited; P.W. 885.

8. As to the reckoning of a day's imprisonment or detention, see s. 140 (2).

9. Under art. 879 (b) of the Pay Warrant a soldier does not forfeit pay while under sentence of field punishment except for days upon which he is *in custody*, unless he has been ordered to forfeit pay under s. 44 (6) or 46 (2) (d) *in addition to* the sentence of field punishment.

10. This deduction is only authorised where the sickness is caused by an offence of which a soldier has been found guilty and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or under the award of a commanding officer) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the commanding officer, and give evidence in substantiation of the facts contained in his certificate. The certificate alone is not sufficient. See K.R. 570, 571. The Pay Warrant provides that where the deduction is authorised under this paragraph the pay is in every case to be forfeited; (P.W. 879 (d)).

11. As to the statement of the ground for compensation in the charge, see R.P. 13 (F) and note, and App. I, note as to the use of forms of charges (23), p. 701.

12. The words "loss" and "expenses" would cover loss of wages and doctor's expenses incurred by a civilian. But military tribunals should not, as a rule, be used as a means for enforcing civil claims. It must be remembered, where there is any doubt as to the merits, that the soldier is bound by the court's decision if adverse to him, whilst the civilian is not bound if it is in the soldier's favour.

13. As to the meaning of "occasioned by" see note 4 to s. 137.

14. *Dispensed with by order.* As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46 (1), R.P. 4 (A) and note),

Part IV. and therefore cannot in the technical sense exercise any power under this paragraph of ordering any deduction from the soldier's pay.

s. 138. 15. Under paras. (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind. Nor would a soldier be liable under them for damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the soldier when endeavouring to escape. But where a soldier refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

16. For the purposes of trial, the amount of compensation will be estimated as follows:—

Where an article which has an official value has been lost or rendered unserviceable, a witness is required who would prove the present value of the article upon a basis of its age and by reference to the regulations for fixing the value of the article at that age. This value would be included in the particulars of the charge.

When the article has no official value expert evidence is required to prove the approximate value, which will be included in the particulars.

When an article has been damaged but not rendered unserviceable, expert evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

Similar principles will be observed if the case is disposed of summarily.

17. *Caused by.* This has the same meaning as the expression "occasioned by." See note 4 to s. 137.

18. *Buildings or property.* The buildings or property need not be public buildings or property; the words include the buildings or property of officers, soldiers or civilians, whether there is any claim against the public or not. Thus a commanding officer may order a man to pay damages for careless damage to dentures supplied to him at the public expense, for a broken window, or other slight damage done by him; a case of serious damage is, of course, not one which a commanding officer should dispend of.

19. Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence.

20. *Requires to be tried by a court-martial.* See s. 46 (8).

21. This paragraph will enable an officer to pay a fine imposed on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer cannot award a fine except for drunkenness. See s. 44 (n), and note 16 thereto.

22. See s. 145, under which the Army Council or the officer deputed by them for the purpose can order this deduction, either in accordance with the order of court or otherwise.

23. If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day. See, however, Army Council's instructions to art. 890 of the Pay Warrant laying down that, except in special cases, the issue of cash may be a sum not exceeding sixpence a day in the case of British soldiers, or fourpence a day (or the equivalent in local currency) in the case of Maltese and non-European soldiers. In the case of a married man to whom marriage allowance is in issue direct to himself and not to his family this minimum cash payment may be increased by an amount equal to 50 per cent. of the appropriate compulsory allotment.

24. The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has "made good" the loss. Where two soldiers were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one soldier dying, or otherwise ceasing to be amenable to the award, the whole amount might legally be levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is that stoppages are intended, not for punishment, but to compensate for loss sustained.

25. As to the power to order forfeiture of pay for offences committed on active service, see ss. 44 (6) and 46 (2) (d). The effect of the proviso is that any forfeiture ordered under those provisions will only take effect on the balance of the soldier's pay which remains after providing for any other penal deductions to which he may be liable at the time. See also K.R. 560 (a) (v) and 561.

Part IV.  
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ss.  
138-140.

139. Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Army Council.

How deduction of pay may be remitted.

140.—(1) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due<sup>1</sup> to such officer or soldier, in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Army Council.

Supplemental as to deductions from 'ordinary pay'.

(2) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment or detention,<sup>2</sup> so, however, that—

- (a) no person shall be treated as absent, imprisoned or detained, for the purposes aforesaid, unless the absence, imprisonment or detention has lasted six hours or upwards, except where the absence prevented the absentee from fulfilling any military duty which was thereby thrown on some other person;
- (b) a period of absence, imprisonment or detention which commences before and ends after midnight may be reckoned as a day;
- (c) the number of days shall be reckoned as from the time when the absence, imprisonment, or detention commences; and
- (d) no period of less than twenty-four hours shall be reckoned as more than one day.

(3) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until His Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

## Part IV.

## NOTE.

1. *Sums due.* This will allow the amount to be deducted from a gratuity, prize-money, or other sums *earned* by but not paid to an officer or soldier. It would not include money lodged in a fund of whatever description.
2. *Day of absence, imprisonment or detention.* See P.W. and note 4 to s. 136.

Prohibition  
of assign-  
ment of  
military pay,  
pensions, &c.

141. Every assignment<sup>1</sup> of, and every charge on, and every agreement to assign or charge, any deferred pay, or military reward payable to any officer or soldier of any of His Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his wife, widow, child, or other dependant, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant<sup>2</sup> for the benefit of the family of the person entitled thereto, or as may be authorised by any Act<sup>3</sup> for the time being in force, be void.

## NOTE.

1. At common law an assignment of "pay" is void, independently of express statutory provision. The common law also regarded as inalienable any allowances, such as half-pay, in which part of the consideration was the recipient's liability to serve the Crown again. On the other hand, pensions awarded entirely as consideration for past services were alienable: *Crosse v. Pries* (1899), L.R., 22 Q.B.D. 429. The present section removed this distinction, and made pensions also inalienable except as therein mentioned.

2. *In pursuance of a Royal Warrant.* See P.W. 1096, 1099, under which part of a pension may in some cases be paid to the Poor Law authorities.

Reserve pay cannot be stopped for the maintenance of a reservist's wife or family or for settlement of a civil debt, as no provision exists in the Pay Warrant for such a stoppage to be made.

3. *Authorised by any Act.* By the Bankruptcy Act, 1914, s. 51 (1), if an officer becomes bankrupt, the trustee is to receive for distribution amongst the creditors so much of the officer's pay as the court, with the consent of the chief officer of the department concerned, may direct.

Before making any order the court will communicate with the chief officer as to the amount, time and manner of payment to the trustee, and will obtain his written consent to the terms of such payment.

By s. 51 (2) (3) of the same Act, the court can, without the consent of the chief officer, deal with half-pay, retired pay, pensions, &c; see *In re Ward* L.R. [1897], 1 Q.B. 266.

Punishment  
of false oath  
and persona-  
tion.

142.—(1) Where any regulations made by the Army Council or the Commissioners of His Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, or with respect to the grant of any relief, benefit, or advantage in connection with military service, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connexion with such payment, delivery or grant, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2) Any person who falsely represents himself to any military, naval, air force, or civil authority to belong to, or to be a particular man in, or who has been in, the regular reserve or auxiliary forces shall be deemed to be guilty of personation.



(3) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or to any relief, benefit, or advantage granted in connexion with military service, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

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ss.  
142, 143.

(4) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

#### NOTE.

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted on indictment, is liable to penal servitude for life. In a very serious case a man might be indicted under that Act; in less serious cases it will be better to prosecute under this section.

Persons guilty of obtaining pay or pensions by fraudulent means can also be proceeded against, either by indictment or summarily, under the Pension and Yeomanry Pay Act, 1884, s. 3.

Personation of the holder of a certificate of service or discharge may also be punished under the Seamen's and Soldiers' False Characters Act, 1906.

Under this section a man who falsely represents himself to any authority to belong to part of His Majesty's forces, or to be a particular man in, or who has been in, any of His Majesty's forces, may be punished, although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention.

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A.

A reservist who commits any offence under subs. (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody; and in the latter case will be tried before a court of summary jurisdiction: Reserve Forces Act, 1882, s. 6 (3).

#### *Exemptions of Officers and Soldiers.*

143.—(1) All officers and soldiers of His Majesty's regular forces<sup>1</sup> on duty or on the march; and

Exemptions  
of officers and  
soldiers from  
tolls.

Their horses and baggage; and

All prisoners under military escort; and

All carriages and horses belonging to His Majesty or employed in his military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted<sup>2</sup> from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parlia-

Part IV. ment already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order, or direction of the legislature or other authority in India or any colony.<sup>2</sup>

ss. 143, 144. Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers, and shall pay for himself and each soldier one half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time and shall in all such cases pay only half the ordinary rate for such boat.

(3) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction,<sup>4</sup> be liable to a fine not exceeding five pounds nor less than ten shillings.

#### NOTE.

1. *Regular forces.* This expression in this section includes the Marines and His Majesty's Indian forces; also the reserve forces when subject to military law: see s. 178. See also s. 190 (8) and Reserve Forces Act, 1882, ss. 14 (2), 23 (1). As to the application of this section to the Territorial Army, see T.R.F. Act, s. 28 (2).

2. The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march; thus an officer driving from his private house to barracks would not be entitled to the exemption.

3. For definition of *India and colony*, see s. 190 (21), (23).

4. On summary conviction; see note to s. 98.

Exemption  
of soldiers in  
respect of  
civil process.

144.—(1) A soldier<sup>1</sup> of His Majesty's regular forces shall not be liable to be taken out of His Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

- (a) On account of a charge of or conviction for crime; or
- (b) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2) For the purposes of this section a crime shall mean a felony, misdemeanor, or other crime or offence punishable, according to the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.

(3) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be

sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be indorsed upon any process or order issued against a soldier. Part IV.  
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ss.  
144, 145.

(5) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made<sup>a</sup> by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court or some judge thereof shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

- (1) Any person having cause of action or suit against a soldier of the regular forces may notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessities, or clothing of such soldier; and
- (2) This section shall not prevent such proceedings with respect to apprentices and indentured labourers as is authorized by this Act.

#### NOTE.

1. The history of this section is given in Clode, *Mil. Forces*, i. 208. It exempts a soldier from appearing in person, though not from being sued, in case of a debt under £30. The exemption does not apply to a soldier required to attend as a witness before a court of law. The section does not apply to an officer.

2. A commanding officer should complain direct to the court. He need not send the complaint through a superior military authority.

145.—(1) A soldier of the regular forces shall be liable to contribute<sup>1</sup> to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person,<sup>a</sup> pay, arms, ammunition, equipments, instruments, regimental necessities, or clothing; nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

*Liability of soldier to maintain wife and children.*

(2) When any order or decree<sup>a</sup> is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall

Part IV. be sent to the Army Council, or any officer deputed by them for the purpose,<sup>4</sup> and in the case—

s. 145.

- (a) Of such order or decree being so sent; or
- (b) Of it appearing to the satisfaction of the Army Council or any officer deputed by them for the purpose<sup>4</sup> that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under sixteen years of age,

the Army Council or officer shall order to be deducted from the daily pay of the soldier, and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree, or towards the maintenance of the wife or children of the soldier, as the case may be, in such manner as the Army Council or officer think or thinks fit, a portion of such daily pay not exceeding—

Where the soldier is a warrant officer (Class I. or Class II.)—in respect of a wife or children whether legitimate or illegitimate, four shillings, and

Where the soldier is a non-commissioned officer who is not below the rank of serjeant—in respect of a wife or children whether legitimate or illegitimate, three shillings, and

In the case of any other soldier—in respect of a wife or children whether legitimate or illegitimate, two shillings.

(3) Where a proceeding is instituted<sup>5</sup> against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, then—

- (a) if at the date of service of the process the soldier is quartered out of the jurisdiction of the court, or (where the proceeding is before a court of summary jurisdiction), out of the petty sessional division in which the proceeding is instituted, the process shall be served on his commanding officer, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if any order or decree is made against the soldier) of a sufficient amount to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose;

- (b) in any other case the process may be served either on the commanding officer or on the soldier, provided that where the process is served on the soldier, a copy thereof shall be sent by the court by which it is issued to the commanding officer by registered post as soon as possible after the process is served, and in any case at least four days before the day fixed for the hearing of the case:

Provided that no proceedings in this section mentioned shall be valid against a soldier of the regular forces if his commanding officer certifies that the soldier is under orders for service beyond the seas,<sup>6</sup> and that in his opinion it will not be possible for the soldier to attend the hearing and return to his quarters in sufficient time to enable him to embark for such service. Every such

certificate shall be sent to the court and shall be final and conclusive. **Part IV.**

Where, by an order or decree sent to the Army Council or officer in accordance with subsection (2) of this section, the soldier is adjudged to pay as costs incurred in obtaining the order or decree any sum left in the hands of the commanding officer<sup>7</sup> under this subsection, the Army Council may cause a sum equal to the sum so left to be paid in liquidation of the sum so adjudged to be paid as costs, and the amount so paid by the Army Council shall be a public debt from the soldier against whom the order or decree was made, and, without prejudice to any other method of recovery, may be recovered by deductions from his daily pay, in addition to those mentioned in subsection (2) of this section. **ss. 145, 146.**

(4) Where any arrears have accumulated in respect of sums adjudged to be paid by any such order or decree as aforesaid whilst the person against whom the order or decree was made was serving as a soldier of the regular forces, whether or not deductions in respect thereof have been made from his pay under this section, then after he has ceased so to serve an order of committal shall not be made in respect of those arrears unless the court is satisfied that he is able, or has since he ceased so to serve been able, to pay the arrears or any part thereof, and has failed to do so.

#### NOTE.

1. See generally Part IV, Appendix V, Pay Warrant.
2. K.R. 370 (xiv) provides for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.
3. A judgment upon a covenant for payment of alimony contained in a separation deed is an order or decree within the meaning of this subsection. A voluntary agreement to contribute to the support of a bastard child will not justify an order for stoppages under subs. (2) (a); a judgment must first be obtained on it.
4. A list of officers to whom the Army Council have deputed their powers for the purpose of this subsection is published from time to time in Army Orders. (See Army Order 6 of 1929.)
5. This subsection deals with the method of procuring the attendance of a soldier to answer process, which may, of course, lead to the making of such an "order or decree" as is referred to in subs. (2).
6. The words "under orders for service beyond the seas" protect a man who is in England on short leave from overseas, and also a man who is one of a draft or unit already warned for service abroad. (In the case of soldiers on leave from overseas, the officer i/c records is for this purpose the O.C.)
7. *Any sum left in the hands of the commanding officer.* This does not mean "any sum remaining, &c." It means the total sum handed to the commanding officer under subs. (3) (a).

**146.** An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom: Provided that nothing in this section shall disqualify any officer for being elected to or being a member of a county council. **Officers not to be sheriffs or mayors.**

#### NOTE.

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See Ch. XII, para. 9.

Part IV. 147. Every soldier in His Majesty's regular forces shall be exempt from serving on any jury.

98.  
147-153A.

NOTE.

Exemption from jury. See Ch. XII, para. 9, as to the exemption of soldiers and officers from liability to serve on juries.

*Court of Requests in India.*

148-151. [These sections, relating to the above subject, were repealed in 1898 and 1895.]

*Legal Penalties in Matters respecting Forces.*

Punishment for pretending to be a deserter.

152. Any person who falsely represents himself to any military, naval, air-force or civil authority to be a deserter from His Majesty's regular forces<sup>1</sup> shall on summary conviction<sup>2</sup> be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months.

NOTE.

1. *His Majesty's regular forces.* See definition in s. 190 (8).
2. *On summary conviction.* See note to s. 98.

Punishment for inducing or assisting officers or soldiers to desert or absent themselves without leave.

153. Any person<sup>1</sup> who in the United Kingdom or elsewhere by any means whatsoever—

- (1) Procures or persuades any officer or soldier to desert or absent himself without leave, or attempts to procure or persuade any officer or soldier to desert or absent himself without leave; or
- (2) Knowing that an officer or soldier is about to desert or absent himself without leave, aids or assists him in deserting or absenting himself without leave, or
- (3) Knowing any officer or soldier to be a deserter or absentee, without leave, conceals such officer or soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable, on summary conviction,<sup>2</sup> to be imprisoned, with or without hard labour, for a term not exceeding six months.

NOTE.

1. An offence of procuring, &c., desertion under para. (1) if committed by a person subject to military law can be dealt with under s. 12 (1) (b). That section does not, however, apply to absence without leave.
2. *On summary conviction.* See note to s. 98.

Penalty for interference with military duties, &c.

153A. Any person who in the United Kingdom or elsewhere,

- (a) wilfully obstructs, impedes, or otherwise interferes with any officer or soldier in the execution of his duties; or
- (b) wilfully produces any disease or infirmity in, or maims or injures, any man whom he knows to be a soldier with a view to enabling such man to avoid military service; or
- (c) with the intent of enabling a soldier to render himself, or induce the belief that he is, permanently or temporarily unfit for service, supplies to or for such soldier any drug

or preparation calculated or likely to render him or lead Part IV. to the belief that he is permanently or temporarily unfit —  
for service ; ss. 153A,  
154.

shall be liable, on summary conviction, to a term of imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

154. With respect to deserters and absentees without leave<sup>1</sup> the following provisions shall have effect :— Apprehension of deserters or absentees without leave.

- (1) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction :
- (2) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter or absentee without leave is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter or absentee without leave to be apprehended and brought forthwith before a court of summary jurisdiction :
- (3) Where a person is brought before a court of summary jurisdiction charged with being a deserter or absentee without leave under this Act, such court may deal with the case<sup>2</sup> in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence :
- (4) The court, if satisfied either by evidence on oath or by the confession<sup>3</sup> of such person that he is a deserter or absentee without leave, shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody :
- (5) Where the person confessed<sup>3</sup> himself to be a deserter or absentee without leave, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to the Army Council, or as they may direct, and if in India<sup>4</sup> to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony<sup>4</sup> to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and

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being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by the Army Council :

- (6) The court may from time to time remand the said person for a period not exceeding eight days in each instance and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :
- (7) Where the court cause a person either to be delivered into military custody or to be committed as a deserter or absentee without leave, the court shall send, if in the United Kingdom, to the Army Council, or as they may direct, and if in India or a colony<sup>4</sup>, to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter or absentee without leave, for which the clerk of the court shall be entitled to a fee of two shillings :
- (8) The Army Council shall direct payment of the said fee :
- (9) Where a person surrenders himself to a constable in the United Kingdom as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that that person is a deserter or absentee without leave, he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction under this section, and in such case shall send to the Army Council or as they may direct a certificate<sup>5</sup> signed by himself as to the fact, date, and place of such surrender.

## NOTE:

1. This section prescribes the proceedings to be taken for apprehending suspected deserters and absentees, and for dealing with persons arrested as, or surrendering themselves as, deserters or absentees. Briefly stated its provisions are as follows:—

By para. (1) upon *reasonable* suspicion any person may without a warrant arrest the suspect, but, of course, he must be prepared to justify the reasonableness of his suspicion, if in fact he is wrong. As to escape from custody, see s. 22. Para. (2) provides for the issue of a search warrant.

If a man surrenders to the police and states that he is a deserter or absentee, then, if the officer in charge of the station is reasonably satisfied of the truth of the confession—as he may be in many cases without corroborative evidence—it is not necessary to take him before a court. The officer himself hands him over to military custody under para. (9), and has, of course, implied authority to detain him for a reasonable time—pending arrival of an escort or conducting N.C.O.

If a man is apprehended on suspicion, or if he has surrendered but the police officer is not satisfied, he must be brought before a court. The court deal with him under para. (4) if they are reasonably satisfied—as they may be without corroboration; if not satisfied, they deal with him under paras. (5) and (6). In either case they send a “descriptive return”; (for form, see Schedule 4, p. 609). As to admissibility in evidence of a “descriptive return” see s. 163 (1) (c).

As to the duties of a commanding officer on receiving information of an arrest, see K.R. 581–587, especially 580, *et seq.*

2. Para. (3) does not make the man's desertion or absence a civil offence punishable by the court of summary jurisdiction. In England the court for the purposes of this section may consist of one justice only; *Waller v. Turner* L.R. [1917] 1 K.B. 39.



3. As to the penalty for false confession see s. 152.  
 4. For definition of *India* and *colony*, see s. 190 (21), (23).  
 5. The form of certificate referred to is A.F. O.1617.

## Part IV

—  
38.

154-156.

**155.** Every person (except the Army Purchase Commissioners and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at—

Penalty on  
trafficking in  
commissions.

- (1) The sale or purchase of any commission in His Majesty's regular forces; or
- (2) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein; or
- (3) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

**156.—(1)** Every person<sup>1</sup> who—

- (a) Buys, exchanges, takes in pawn, detains, or receives from any person, on any pretence whatsoever; or
- (b) Solicits or entices any person to sell, exchange, pawn, or give away; or
- (c) Assists or acts for any person in selling, exchanging, pawning, or making away with

Penalty on  
purchasing  
from soldiers  
regimental  
necessaries,  
equipments,  
stores, &c.,  
and for un-  
lawful posses-  
sion of  
military  
certificates,  
&c.

any of the property following; namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing issued for the use of officers or soldiers, or any military or air force decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier, or his horse,<sup>2</sup> or of any horse employed in His Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or that the same was sold by order or with the consent of the Army Council, or some competent military authority, or that the same was the personal property of an officer who had retired or ceased to be an officer, or of a soldier who had been discharged, or of the legal personal representatives of an officer or soldier who had died, be liable on summary conviction to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both such fine and imprisonment.

(2) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction,<sup>3</sup> and if such court have reasonable ground to believe that the

Part IV. property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then

s. 156. if such person does not satisfy the court that he came by the property so found lawfully<sup>3</sup> and without any contravention of this Act, he shall be liable on summary conviction to the same penalties as are prescribed in the case of a contravention of the last preceding subsection.

(3) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.<sup>4</sup>

(4) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction<sup>5</sup>; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5) A court of summary jurisdiction,<sup>5</sup> if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods; and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6) For the purposes of this section, property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessities or otherwise within the meaning of section thirteen of that Act.

(8) It shall be lawful for the Governor-General of India or for the legislature of any colony,<sup>3</sup> on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

(9) Every person who—

(a) receives, detains or has in his possession any identity certificate, life certificate, or other certificate, or official

document evidencing or issued in connection with the Part IV. right of any person to a military pension, pay or reserve pay, or to any bounty, allowance, gratuity, relief, benefit or advantage granted in connection with military service, as a pledge or security for a debt, or with a view to obtain payment from the person entitled thereto of a debt due either to himself or to any other person ; or

—  
ss. 156,  
156A.

- (b) without lawful authority or excuse (the proof whereof shall lie on the accused) has in his possession any such certificate or document, or any certificate of discharge or any other official document issued in connection with the mobilisation or demobilisation of any of His Majesty's forces or any member thereof,

shall be liable on summary conviction to the like penalty as for an offence under subsection (1) of this section, and any such certificate or other document shall be deemed to be property within the meaning of this section.

#### NOTE.

1. This section applies also to natives of India and to the arms, &c., of Indian soldiers.

2. For definition of *India*, *colony*, *court of summary jurisdiction*, and *horse*, see ss. 190 (21), (23), (35), (40).

3. It was held in *Laws v. Read* (63 L.J. (Q.B.) 683) that the arrest, without warrant, of a person found in possession of stores was lawful, even though the person was charged with and convicted of purchasing the stores from a soldier under subs. (1), and that an action for false imprisonment in such a case would not lie.

4. This sub-section is virtually repealed by the Criminal Evidence Act, 1898, which enables persons charged with offences, and the wives or husbands of such persons, to give evidence subject to certain conditions, and supersedes all existing enactments authorising such persons to give evidence. See R.P. 80, and note.

#### 156A. If—

- (1) any unauthorised person uses or wears any military decoration or medal, or medal ribbon, or any badge, wound stripe, or emblem supplied or authorised by the Army Council, or any decoration, medal, or medal ribbon, badge, wound stripe, or emblem so nearly resembling the same as to be calculated to deceive ; or
- (2) any person falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, medal, or medal ribbon, badge, wound stripe, or emblem as aforesaid ; or
- (3) any person without lawful authority or excuse supplies or offers to supply any such decoration or medal as aforesaid to any person not authorised to use or wear the same ;

Unauthorised use of decorations, &c.

such person shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months :

Provided that nothing in this section shall be deemed to prohibit the wearing or supply of ordinary regimental badges or any brooch or ornament representing the same.

## Part IV.

*Jurisdiction.*

157, 158.  
Person not to  
be tried  
twice.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

## NOTE.

A conviction by court-martial, if not confirmed, is of no validity; in such case, therefore, the accused has not been convicted, and may legally be tried again. (Ch. V, para. 87, and s. 54 (6)).

In cases requiring confirmation by the King, and where such has been withheld, a re-trial is not to be ordered unless directions by His Majesty for such re-trial have been issued; in other cases where re-trial may legally take place, it should not be ordered until the Judge-Advocate-General has been consulted, if it is practicable to do so.

Where a court is not legally constituted and has no jurisdiction—as, for example, if the convening order is not signed, or is signed by an officer not authorised to convene such a court, or if the court is composed of too few members, or if unqualified officers sit—it is no court at all. The accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted court have inadvertently been confirmed.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because the trial was unsatisfactory—e.g., because evidence was improperly admitted—the accused has stood a trial and cannot be tried again.

It is a general principle of English law that it does not permit a man to be tried twice in respect of the same offence; but the application of the rule is not always easy. Where the same incident, or set of incidents, gives rise to two trials, the test for practical purposes, of whether the offence is “the same” offence would appear to be this:—Could the accused have been lawfully convicted at the first trial upon any charge then before the court of the offence charged at the second trial? If so, the second trial is illegal and void. Thus on a charge of desertion, a man could, by virtue of s. 56 (3), be convicted of absence without leave; if he is acquitted generally, the acquittal applies to both offences, and he cannot subsequently be charged with absence (upon the same facts); if, however, the court, while acquitting him of desertion, convict him of absence without leave, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence.

Where a man is re-tried on the same charges, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, &c., when confirming the proceedings, if a greater punishment has been awarded on the second trial.

Where a new trial is ordered, no officer may serve on it who sat on the former court; (R.P. 19 (B) (iii)).

This section only prohibits a second trial by *court-martial* after acquittal or conviction by court-martial. As to the legality of a civil trial after trial by court-martial, see s. 162.

Liability to  
military law  
in respect of  
status.

158.—(1) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law,<sup>1</sup> in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject:

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment, unless his trial commences within three months<sup>2</sup> after he had ceased to be subject to military law: but this section shall not affect the jurisdiction of a civil

court in the case of any offence triable by such court as well as Part IV. by court-martial, and the limitation of time imposed by this proviso shall not apply in the case of a person who has been attached to or seconded for service with His Majesty's military forces and has ceased to be subject to military law by reason only of the termination of such attachment or seconding. ss. 158, 159.

(2) Where a person subject to military law is sentenced by court-martial to penal servitude, imprisonment, or detention, this Act shall apply to him<sup>2</sup> during the term of his sentence, notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention, and punished accordingly as if he continued to be subject to military law.

## NOTE.

1. This section meets the case of a person who commits an offence against this Act whilst subject to it, and then ceases to be subject to it. It applies where a charge is made that an offence has been committed, even if it eventually proves that the accused was innocent; (*Marks v. Frogley L.R. [1895] 1 Q.B. 888*). Such cases will occur, for example, when an officer relinquishes his commission or is dismissed, when a soldier is discharged, or transferred to the reserve, or transferred from the Army to the Air Force, or when reservists return home after a period of training. Again, members of the Territorial Army are constantly changing their status, as they are subject to military law only in the circumstances stated in s. 176 (6A).

By subs. (1), such a person, though he has ceased to be subject to military law even before discovery of the offence, may nevertheless be arrested, tried and punished just as if he were still so subject, with the exceptions mentioned in the proviso. See specimen charge-sheet No. 108, p. 734.

A sentence of dismissal or cashiering is not operative until promulgated. Therefore an officer sentenced to be dismissed who commits another offence between trial and promulgation, can be tried for it under this section even after promulgation of the sentence of dismissal.

2. The proviso to subs. (1) enacts that a person who since the commission of the offence has ceased to be subject to military law can only be tried within three months after he has ceased to be so subject; the three months will not be deemed to have expired if the trial has commenced within that period (*Ch. V, para. 12*). An exception is made in the case of mutiny, desertion and fraudulent enlistment, for which he can be tried at any time, subject to the restrictions in s. 161, and in the case of attached, &c., personnel returning to the Air Force. Further exceptions are made by the Reserve Forces Act, 1892, s. 26 (2). See also as to the Territorial Army, T.R.F. Act, s. 25 (2).

When the three months have once expired, the offender is protected, and his liability is not revived by his again becoming subject to military law.

3. Subs. (2) deals with the case of a person who is tried and sentenced whilst still subject to military law. It enacts that a sentence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law; but the Act applies only for the purpose of completing the sentence.

159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

Liability to military law in respect of place of commission of offence.

## Part IV.

160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

160 162. Punishment not increased by trial elsewhere than offence committed.

Liability to military law in respect of time for trial of offences.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years<sup>1</sup> before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment<sup>2</sup>; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner<sup>3</sup> for not less than three years as a soldier of the regular forces he shall not be tried for any such offence of desertion (other than desertion on active service)<sup>4</sup>, or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment<sup>5</sup> all service prior to such enlistment shall be forfeited<sup>6</sup>: Provided that a soldier who has fraudulently enlisted during a period of re-engagement shall only forfeit the service rendered during such re-engagement, and that the Army Council may restore all or any part of the service forfeited under this section to any soldier who may perform good or faithful service or may otherwise be deemed by the Army Council to merit such restoration of service.

## NOTE.

1. The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act either by court-martial, or by his commanding officer, for any offence except mutiny, desertion or fraudulent enlistment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under s. 56 (3) of absence without leave from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial.

2. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment it is provided that except in the case of one of the greatest of all military offences—desertion on active service—an offender is not to be tried for the offence if he has served continuously in an exemplary manner for three years as a soldier of the regular forces.

3. *In an exemplary manner.* This means that the man has had no entry in the regimental conduct sheet for a continuous period of three years; K.R. 548.

4. *Active service.* For definition, see s. 189.

5. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract.

6. The service rendered prior to such fraudulent enlistment is forfeited, except that a soldier who fraudulently enlisted during a period of re-engagement will only forfeit the service rendered during such re-engagement. Under the power given by the proviso to the section, the Army Council may restore the service so forfeited, and K.R. 246 gives authority for its restoration. The restored service will count for the purpose of reckoning service towards discharge or transfer to the reserve.

Adjustment of military and civil law.

162.—(1) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence, that court shall, in awarding

punishment, have regard to the military punishment he may have Part IV. already undergone.

(2) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law,<sup>1</sup> when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service. ss. 162, 163.

(3) If an officer—

- (a) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command, who is so accused or convicted as aforesaid; or
- (b) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of His Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4) A certificate of a conviction of an officer under this section, with the judgment of the court thereon in such form as may be directed by the Army Council, shall be transmitted to the Army Council.

(5) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purposes of the apprehension, trial and punishment of the offender, be deemed to have been committed within the jurisdiction of His Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.<sup>2</sup>

(6) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.<sup>3</sup>

#### NOTE.

1. This section, in effect, declares that the civil law remains supreme, and that a person subject to military law is not thereby exempted from the civil law. In the case of any civil offence serious enough to be called a "crime"—as to which see s. 144—he may be tried and punished by a civil court; and if such a court either convicts or acquits him he cannot be tried again under this Act for the same offence. On the other hand, a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence (if an offence against the civil law), but in such case the civil court in awarding punishment must have regard to any punishment which the accused may already have undergone.

2. See also s. 170 (3).

3. If a N.C.O. is convicted by a civil court, the case is to be reported to an officer not below the rank of brigadier so that he may consider whether it is desirable to recommend the reduction of the offender under s. 183 (2); K.R. 573.

#### Evidence.

163.—(1) The following enactments shall be made with respect to evidence<sup>1</sup> in proceedings under this Act, whether before a civil court or a court-martial; that is to say, Regulations as to evidence.

- (a) The attestation paper purporting<sup>2</sup> to be signed by a person on his being attested as a soldier; or the declaration

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purporting<sup>3</sup> to be made by any person upon his re-engagement in any of His Majesty's regular forces, or upon any enrolment in any branch of His Majesty's service, shall be evidence of such person having given the answers<sup>2</sup> to questions which he is therein represented as having given :

The enlistment<sup>3</sup> of a person in His Majesty's service may be proved by the production of a copy of his attestation paper purporting<sup>3</sup> to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper :

- (b) A letter, return, or other document respecting the service<sup>4</sup> of any person in, or the discharge of any person from, any portion of His Majesty's forces, or respecting a person not having served in or belonged to any portion of His Majesty's forces, if purporting<sup>3</sup> to be signed by or on behalf of a Secretary of State or the Army Council, or of the Commissioners of the Admiralty, or of the Air Council, or by the commanding officer of any portion of His Majesty's forces, or of any of His Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document :
- (c) Copies purporting to be printed by a Government printer of King's regulations, or regulations referred to in section one hundred and forty-two of this Act of royal warrants, of army circulars or orders, and of rules made by His Majesty, or a Secretary of State or the Army Council, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars or orders, and rules :
- (d) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer or to be issued, if in the United Kingdom, by His Majesty's Stationery Office, and if in India, by some office under the Governor-General of India shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :
- (e) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting<sup>3</sup> to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or the Army Council to certify the same shall be admissible in evidence :

[Paragraph (f) is repealed by the Reserve Forces Act, 1882, but see s. 24 (2) of that Act.]

- (g) Where a record is made in one of the regimental books<sup>5</sup> in pursuance of any Act or of the King's regulations,



or otherwise in pursuance of military duty, and purports<sup>1</sup> Part IV.  
to be signed<sup>6</sup> by the commanding officer or by the officer  
whose duty it is to make such record, such record shall be s. 163.  
evidence<sup>7</sup> of the facts thereby stated :

- (A) A copy of any record in one of the said regimental books purporting<sup>8</sup> to be certified to be a true copy by the officer having the custody<sup>8</sup> of such book shall be evidence of such record :
  - (i) A descriptive return within the meaning of this Act, purporting<sup>9</sup> to be signed<sup>9</sup> by a justice of the peace, shall be evidence of the matters therein stated<sup>10</sup> :
  - (j) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has surrendered himself into the custody of a provost marshal, assistant provost marshal or other officer, or any portion of His Majesty's forces, a certificate<sup>11</sup> purporting<sup>8</sup> to have been signed by such provost marshal, assistant provost marshal or other officer, or by the commanding officer of the portion of His Majesty's forces to whom the surrender was made, and stating the fact, date, and place of such surrender shall be evidence of the matters so stated<sup>12</sup> :
  - (k) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has been delivered into military custody by a police officer in charge of a police station in the United Kingdom, a certificate<sup>13</sup> purporting<sup>8</sup> to be signed<sup>14</sup> by such police officer, and stating the fact, date, and place of the surrender of the officer or soldier shall be evidence of the matters so stated :
  - (l) Any document which would have been admissible in any proceeding under the Air Force Act by virtue of section one hundred and sixty-three of that Act shall in like manner and for the same purpose be admissible in evidence under this Act :
  - (m) Where an officer or soldier has been apprehended and on arrest taken to a police station in any place in any part of His Majesty's dominions, or has on surrender been taken into custody at any such police station, then, for the purpose of any proceedings against that officer or soldier, a certificate<sup>15</sup> purporting<sup>8</sup> to be signed<sup>16</sup> by the police officer in charge of that police station, stating the fact, date, and place of arrest or surrender, shall be evidence of the matters so stated.
- (Z) For the purposes of this Act the expression " Government printer " means any printer to His Majesty, and in India any Government press.

NOTE.

1. See generally as to evidence of documents, Ch. VI, paras. 31-40; and as to the application of this section to proceedings under the T.R.F. Act and the Reserve Forces Act, 1882, see s. 26 (2) of the former and s. 27 (2) of the latter Act.

This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with military administration, but does not make them conclusive evidence; therefore evidence may be given to contradict them.

**Part IV.** A document purporting to be such a document as is specified in the various paras. of subs. (1) is upon mere production to the court *prima facie* evidence of the facts therein stated; but, of course, it is not admissible evidence that the accused is the person to whom it relates; and evidence must be given on oath by a witness to prove that the accused is in fact the person referred to in the document. If the accused disputes the identification, great caution is required as to the sufficiency of the evidence. And if he disputes the accuracy or completeness of the books, further evidence on the disputed points must be adduced.

s. 163.

Documents made admissible in evidence by this section except those mentioned in subs. (1) (c) and (d) can only be received as such when produced by a witness on oath.

2. *Purporting.* This expression means that if the paper appears to be certified or to be signed as mentioned in the paragraph, it can be accepted without calling a witness to prove that it has been so certified, signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c., to be given by a witness.

3. In cases of fraudulent enlistment the enlistment may be proved by a copy of the attestation paper; but such copy must be signed by the officer having the custody of it, and not by a subordinate officer "for" him; and if any question arises as to the signature or handwriting the original or duplicate must be produced. In cases of false answer on attestation a copy is not admissible in evidence, and the original or duplicate must be produced.

4. Para. (b) is limited to proof of the fact or length of service or date of discharge; it does not assist proof of particular incidents occurring during such service.

5. As to what books are recognised as "regimental books" see K.R. 1596 and App. XXV.

6. For the purpose of this paragraph it is important that the records in the regimental books shall be signed by the proper officer, namely, the officer required by this Act, by the King's Regulations, or by his military duty, to make the record. A record in books not being "regimental books" is not made evidence.

7. The fact that a statement is recorded in a regimental book does not make it admissible in evidence if it is otherwise legally objectionable, e.g., if a court of inquiry under s. 72 be held before 21 clear days have expired, a record of its finding is inadmissible.

8. Such a copy cannot be certified by another officer "for" the officer having the custody of the book.

9. A descriptive return (A.F. O.1618) is admissible in evidence, though not signed by the deserter or absentee; if not signed by the justice it is inadmissible.

10. When it is necessary to produce A.F. O.1618 (descriptive return) in evidence before a court-martial, the "particulars in the evidence on which the prisoner is committed" given on page 2 of the form should be previously examined. If these particulars are found to contain any statement regarding the accused which, on the grounds of irrelevancy, would not be admissible as *viva voce* evidence before a court-martial (e.g., that accused had been previously convicted; or that he was arrested on suspicion of having committed some other offence), or if containing any alleged admission by the accused which might prejudice him on his trial, a copy of the whole entry should be made and retained by the O.C. unit to which the man belongs. The entry on page 2 of the form, or such part of it as may be irrelevant or prejudicial as above, should then be pasted over, so that it may not come under the notice of the court prior to the finding.

11. For form of certificate, see K.R. 586 (c).

12. A statement in the certificate of surrender to the effect that the man was wearing civilian clothes is admissible as part of the fact of the surrender.

13. The form of certificate is A.F. O.1617.

14. The certificate must be signed by the officer indicated, and not by another officer "for" him. This paragraph is applicable only to cases of "surrender."

15. The following form of certificate will invariably be obtained from the police official concerned, care being taken that no irrelevant facts are recorded thereon:—

*Certificate in accordance with section 163 (1) (m) of the Army Act.*

ss.  
163-165.

I certify that the person whose description is given below was arrested (or surrendered) at (place), at (hour), on the day of , 19 .

Regimental particulars of officer or soldier referred to above.	{	No. ....
		Rank .....
Description.	{	Name .....
		Unit .....
		Age .....
		Height.....
		Complexion.....
		Hair.....
		Eyes.....
Signature of officer of police in charge of police station where the above-named person was taken, or placed in custody, on arrest or surrender.	{	Marks.....
		..... (In charge of ..... Police Station.)

16. Where it is necessary to produce evidence in the form of the certificate of apprehension or surrender under this paragraph, such certificate can only be admitted as evidence when it embraces the essential particulars laid down. In particular, it is essential that it should be actually signed by the police officer in charge of the station where the accused person was taken into custody, and that the police officer should show on the certificate that he is, in fact, in charge of the station.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment or order of the court thereon, or if he was acquitted, the acquittal, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the order of the court or of the acquittal of the prisoner, as the case may be.

Evidence of civil conviction or acquittal.

#### NOTE.

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

In England and Wales, under Rule 13 of the Criminal Appeal Rules, 1908, a certificate of conviction cannot issue under this section in the case of any person convicted on indictment until ten days after the date of conviction, and where the person convicted appeals against the conviction or applies for leave to appeal, not until the appeal or application has been determined. A person applying for a certificate of conviction is therefore required to satisfy the clerk of the court to whom the application is made that no appeal is pending, and this may be done by forwarding to the clerk a certificate to that effect, which can be obtained by applying to the Registrar of the Court of Criminal Appeal, Royal Courts of Justice, London, W.C.

165. The original proceedings of a court-martial, purporting<sup>1</sup> to be signed by the president<sup>2</sup> thereof and being in the custody of the Judge Advocate General, or of the officer having the lawful custody<sup>3</sup> thereof, shall be deemed to be of such a public nature<sup>4</sup> as to be admissible in evidence<sup>5</sup> on their mere production from

Evidence of conviction by court-martial.

Part IV. such custody; and any copy purporting to be certified by such Judge Advocate General or his deputy authorised in that behalf, or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate General, deputy, or officer; and a Secretary of State upon production of any such proceedings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

## NOTE.

1. *Purporting.* See note 2 to s. 163.
2. To be admissible in evidence under this section the proceedings must be signed by the president; see R.P. 50.
3. As to the custody of courts-martial proceedings, see R.P. 96-98.
4. *Shall be deemed to be of such a public nature, &c.* See the Evidence Act, 1851, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4d. for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.
5. This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence. It is to be observed, however, that for the purposes of proving a previous conviction, in addition to the production of the proceedings, evidence must be available to show the identity of the person mentioned in the proceedings with the person charged.
6. *A Secretary of State, by warrant under his hand.* The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see Ch. VIII., para. 21, note 7), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his retention in custody; see s. 172 (4) and note.

*Summary and other Legal Proceedings.*

Prosecution of offences, and recovery and application of fines.

166.—(1) A court of summary jurisdiction having jurisdiction in the place where the offence was committed or in the place where the offender may for the time being be shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one half to be paid to the informer.

(4) Where the maximum fine or imprisonment<sup>1</sup> which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may

impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practical petty sessional court. Part IV.  
—  
ss.  
166, 167.

(5) The court of summary jurisdiction in Ireland,<sup>3</sup> when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(6) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act if recovered in England, be paid into the Exchequer, and if recovered in Ireland,<sup>2</sup> shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

#### NOTE.

1. Under the Summary Jurisdiction Acts, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and in some cases such powers do not extend to imposing the minimum fine or imprisonment fixed by this Act. In such a case they may, under this subsection, impose the maximum fine or imprisonment which they can impose in ordinary cases, i.e., 20s. or 14 days (Summary Jurisdiction Act, 1879, s. 20 (7)).

2. As regards the Irish Free State, see note 10 to s. 190.

167.—(1) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by the Army Council, or of any person authorised by this Act to complain. Summary  
proceedings  
in Scotland.

(2) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.<sup>1</sup>

(3) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the King's and Lord Treasurer's Remembrancer, on behalf of His Majesty.

(4) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

**Part IV.** (7) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

**NOTE.**

1. The Summary Procedure Act, 1864, was repealed by the Summary Jurisdiction (Scotland) Act, 1908, and the form of conviction will now be in accordance with the provisions of that Act; see s. 53 thereof.

Summary proceedings in Isle of Man, Channel Islands, India, and the colonies.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony<sup>1</sup> in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law or as near thereto as circumstances admit.

**NOTE.**

1. For definitions of *India* and *colony* see s. 100 (21), (23).

Power of Governor-General of India and legislature of colony as to fines.

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Protection of persons acting under Act.

170.—(1) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence

shall be brought in one of His Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any Colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

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ss.  
170-172

#### NOTE.

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see Ch. VIII, para. 30. This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of. See Ch. VIII, para. 32.

Actions can be brought in courts at home in respect of acts done abroad. See Ch. VIII, paras. 32, 33.

#### Miscellaneous.

171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

Exercise of power vested in holder of military office.

#### NOTE.

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For instance, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the staff officer, adjutant, or other person to whom such reports are usually addressed. See also R.P. 131, and note, 1 to s. 172.

172.—(1) Where any order is authorised by this Act to be made by the Army Council, or by the Commander-in-Chief or Adjutant-General of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders<sup>1</sup> on behalf of the Army Council or such Commander-in-Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

Provisions as to warrants and orders of military authorities.

(2) The foregoing enactment of this section shall extend to any order or direction issued in pursuance of this Act in relation to a military convict or military prisoner or soldier undergoing detention, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict or prisoner or soldier has been convicted, and there is a good and valid conviction to sustain the order or directions.<sup>2</sup>

(3) An order in any case if issued in the prescribed form<sup>3</sup> shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.<sup>2</sup>

**Part IV.** (4) Where any military convict or military prisoner or soldier —  
 ss. 172, 173. undergoing detention is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner or soldier shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.<sup>4</sup>

(5) Where a military convict, or a military prisoner, or a soldier undergoing detention, or a person who is subject to military law and charged with an offence, is a prisoner or soldier in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or soldier to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or soldier in custody and convey him in accordance with the order, and the prisoner or soldier while so kept shall be deemed to be kept in military custody.

**NOTE.**

1. The object of this subsection is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself. So, too, must an order convening a field general court-martial.

2. Subs. (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections.

3. *Prescribed form.* See R.P. 133.

4. This subsection is introduced for the same object as subs. (2) and (3). These subsections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

**Furlough in  
 case of sick-  
 ness.**

173. If any soldier on furlough is detained by sickness or other casualty<sup>1</sup> rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month<sup>2</sup>; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier, if known, and if not, then to the Army Council. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough, be liable to be treated as a deserter, or as absent without leave.

**NOTE.**

1. A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial: s. 27 (4).

2. See K.R. 1518-9.



**174.**—(1) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences; and excise licences may be granted to such persons accordingly.

ss.  
174, 174A  
Licences of  
canteens.

(2) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor.

#### NOTE.

This section now applies only as regards Northern Ireland, having been repealed as regards England in 1902, and as regards Scotland in 1903.

Under the provisions of s. 111 (2) (1) of the Licensing (Consolidation) Act, 1910, and s. 50 of the Licensing (Scotland) Act, 1903, excise licences for military canteens may be granted in England and Scotland without a justice's licence or certificate to any persons holding canteens under the authority of a Secretary of State.

**174A.** Notwithstanding anything in the Disorderly Houses Act, 1751, or in any similar enactment contained in any other Act, whether public, general or local or personal, or in the Theatres Act, 1843, where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind or for the public performance of stage plays, without any licence in pursuance of those Acts, or either of them.

Use of recreation  
rooms  
without  
licence.

## PART V.

## Part V.

### APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

#### *Introductory Note as to Application of Military Law.*

1. Persons subject to military law are divided by this part of the Act into (1) persons so subject as officers and (2) persons so subject as soldiers.
2. The expression "officer" is defined in s. 190 (4) as meaning an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof, and as also including—
  - (a) A person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof;
  - (b) A person whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's forces, or of any arm, branch, or part thereof; and
  - (c) Any officer of His Majesty's naval or air forces who is for the time being subject to military law.

Application  
of military  
law.

Persons sub-  
ject to  
military law  
as officers.

**Part V.** Officers holding honorary commissions are included in the definition of officer. Every officer, as so defined, is not necessarily subject to military law. The persons subject to military law as officers are:—

- (1) Officers of the regular forces on the active list, and officers not on the active list if employed on military service under an officer of the regular forces (s. 175 (1)); also officers of His Majesty's Air Force attached to, or seconded for service with, the regular forces, subject to certain modifications contained in this Act; (ss. 175 (1A) and 179A);

The meaning of the "active list" must be ascertained by reference to the Pay Warrant. Under the Warrant now in force the active list is comprised of officers of the regular forces, whether on full pay, half-pay, or otherwise, prior to their retirement, and does not include officers who have retired and are subsequently recalled to service under article 521, or re-employed under article 504, P.W. (P.W. 21.)

The expression "regular forces" means the British and Indian forces, the Royal Marines, soldiers of the reserves when called out on permanent service, and forces raised in a colony by direct order of His Majesty, such as the Royal Malta Artillery. Certain modifications of the Act, in its application to the Royal Marines and Indian forces, are contained in ss. 179 and 180.

- (2) Officers of the Territorial Army and the Territorial Army Reserve in the circumstances mentioned in s. 175 (2) and (3A);
- (3) Officers of forces raised out of the United Kingdom and India and serving under an officer of the regular forces (see s. 175 (4));
- (4) Persons who under the orders of the Army Council or of the Governor-General in India accompany in an official capacity any of His Majesty's troops on active service in any place, with the qualification that such a person if a native of India will be subject to Indian military law (see s. 175 (7) and note);
- (5) Persons accompanying a force on active service and holding from the commanding officer of the force passes entitling them to be treated as officers (see s. 175 (8) and note);
- (6) Officers belonging to the Reserve of Officers, and the Indian Army Reserve of Officers, or the Army in India Reserve of Officers, in the circumstances mentioned in paragraphs (10) and (9) respectively of s. 175 (see also the Pay Warrant);
- (7) Officers of the Militia (see s. 175 (10));
- (8) Officers of forces raised in India or a colony when attached to or doing duty with troops in the United Kingdom in the circumstances mentioned in s. 175 (11);
- (9) Officers of a force raised in India or a colony to which the Army Act is applied by the law of India or the colony, &c. (s. 175 (12)).

The Act further makes provision with respect to officers of the Volunteers; but as this force is not now raised it is unnecessary to summarize those provisions of the Act.

Persons sub-  
ject to  
military  
law as  
soldiers.

3. The persons subject to military law as soldiers are set out in s. 176 (g.s.). The provisions, however, respecting the men of the Volunteers, are not at present important, as this force is not now raised in the United Kingdom.

It is to be observed that the expression "soldier" includes warrant officers and non-commissioned officers (s. 190 (5) and (6)), subject, however, to the special provisions with respect to them in ss. 182 and 183.

It is further to be noted that in spite of the limitations contained in s. 176 (5) a man of the Army Reserve (including the Militia) is, in a modified way, at all times subject to military law, inasmuch as he is liable to be tried by a court-martial under s. 6 of the Reserve Forces Act, 1882, for the offences mentioned in that section, which are: failure to attend at any place when required, insubordinate behaviour to superior officers, and non-compliance with the regulations for the payment or government of the force.

Persons not  
belonging  
to His  
Majesty's  
forces  
subject to  
military law  
as soldiers.

4. It will be observed that the above summary includes amongst the persons subject to military law certain civilians. When troops are on active service it is absolutely necessary for the sake of military operations and discipline that civilians who accompany them should be under the control of military officers and tribunals.

The only modification in the application of the Act to persons who do not belong to His Majesty's forces which requires notice here is that such persons cannot be punished by a C.O. (s. 184 (2)).

8. As to the trial and punishment of a person who, or whose corps, has ceased to be subject to military law since the commission of the offence, see s. 168 and note.

—  
Trial of persons who have ceased to be subject to military law.

*Persons subject to Military Law.*

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say,

s. 175.  
Persons subject to military law as officers.

- (1) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces, who is subject to military law :
- (1A) Any officer of His Majesty's air force who is attached to, or seconded for service with, the regular forces, subject, however, to the modifications<sup>1</sup> contained in this Act :
- (2) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law :

[*Paragraph (3) repealed by T. A. & M. Act, 1921.*]

- (3A) Officers of the territorial army, other than members of the permanent staff, if on the active list at all times, and if on the territorial army reserve, at any time when they are doing duty with any body of troops for the time being subject to military law or are ordered on any duty or service for which as such reserve officers they are liable :
- (4) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of His Majesty beyond the limits of the United Kingdom and of India,<sup>2</sup> and serving under the command of an officer of the regular forces :  
Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony :
- (5) Officers of the volunteers, whenever in actual command of men who are in pursuance of this Act subject to military law, or when their corps is on actual military service :
- (6) Any officer of the volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or with his own consent, is ordered on duty by the military authorities :
- (7) Every person not otherwise subject to military law who, under the general or special orders of the Army Council or of the Governor-General of India, accompanies in an official capacity equivalent to that of officer any of His

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Majesty's troops on active service in any place,<sup>3</sup> subject to this qualification, that where such person is a native of India he shall be subject to Indian military law as an officer:<sup>4</sup>

- (8) Any person, not otherwise subject to military law, accompanying a force on active service, who shall hold from the commanding officer of such force, a pass, revocable at the pleasure of such commanding officer, entitling such person to be treated on the footing of an officer:<sup>4</sup>
- (9) The persons holding commissions as officers in the Indian army reserve of officers or the Army in India reserve of officers when such officers are called out in any military capacity:
- (10) Any reserve officer within the meaning of the Royal Warrant regulating the composition of the reserve of officers, if an officer holding a commission as officer in the militia at all times, and if not holding such a commission when he is ordered on any duty or service for which, as such reserve officer, he is liable :<sup>5</sup>
- (11) All officers belonging to a force raised in India or a colony, when attached to or doing duty with any portion of the regular, reserve, or auxiliary forces in the United Kingdom:
- (12) All officers of a force raised in India or a colony to which this Act is, in whole or in part, applied by the law of India or the colony, at such times and subject to such adaptations, modifications, and exceptions as may be specified in such law.

## NOTE.

1. *Modifications.* See s. 179A.

2. This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense: see Ch. XI, para. 83. See also s. 176 (3) and note. As to strictly colonial forces, see s. 177.

3. See s. 184 for special provisions applicable to persons made subject to military law by this paragraph.

4. Paras. (7) and (8). These paragraphs make certain persons subject to military law as officers who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Army Council or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official of the Governor-General, who is a native of India, will be subject to Indian military law. See s. 180 (2).

5. Under this paragraph an officer of the Militia is at all times subject to military law. Other officers of the Reserve of Officers (which includes the Supplementary Reserve) are so subject when ordered on any duty or service for which, as reserve officers, they are liable; and in addition they become subject to military law in the circumstances stated in the concluding part of s. 175 (1), that is to say, when employed on military service under the orders of an officer of the regular forces who is himself so subject.

Persons subject to military law as soldiers.

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

- (1) All soldiers of the regular forces:
- (1A) All airmen of the air force who are attached to the regular forces, subject, however, to the modifications<sup>1</sup> contained in this Act:

- (2) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces<sup>3</sup> who are not otherwise subject<sup>3</sup> to military law : Part V.  
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s. 176.
- (3) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom and of India,<sup>4</sup> and serving under the command of an officer of the regular forces :  
 Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony :
- (4)<sup>5</sup> All pensioners not otherwise subject to military law who are employed in military service<sup>6</sup> under the orders of an officer of the regular forces :
- (5)<sup>5</sup> All non-commissioned officers and men belonging to the army reserve force<sup>7</sup>—
- (a) When called out for training and exercise ; and
  - (b) When called out for duty in aid of the civil power ; and
  - (c) When called out on permanent service ; and
  - (d) When employed in military service<sup>8</sup> under the orders of an officer of the regular forces :

[*Paragraph (6) repealed by T. A. & M. Act, 1921.*]

- (6A) All non-commissioned officers and men belonging to the territorial army—
- (a) When they are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and
  - (b) When attached to or otherwise acting as part of or with any regular forces ; and
  - (c) When embodied ; and
  - (d) When called out for actual military service, for purposes of defence in pursuance of any agreement:

[*Paragraph (7) repealed by T. A. & M. Act, 1921.*]

- (8) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom—
- (a) When they are being trained or exercised with any portion of the regular forces ; and
  - (b) When they are attached to or otherwise acting as part of or with any regular forces ; and
  - (c) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service :

- Part V.** (8a) All non-commissioned officers and men belonging to a force raised in India or a colony when attached to or otherwise acting as part of or with any portion of the regular, reserve, or auxiliary forces in the United Kingdom :
- s. 176.
- (9)<sup>1</sup> All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service, and who are not under the former provisions of this Act subject to military law :
- (10)<sup>2</sup> All persons not otherwise subject to military law<sup>3</sup> who are followers of or accompany<sup>4</sup> His Majesty's troops, or any portion thereof, when employed on active service ; subject to this qualification that, where any such persons are employed by or are followers of, or accompany any portion of, His Majesty's forces, consisting partly of His Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law :
- (11) All non-commissioned officers and men belonging to a force raised in India or a colony to which this Act is, in whole or in part, applied by the law of India or the colony, at such time and subject to such adaptations, modifications, and exceptions as may be specified in such law.

## NOTE.

1. *Modifications.* See s. 179a.

2. See s. 181 (2).

3. *Otherwise subject, &c.* Soldiers of the regular forces posted to the permanent staff of the auxiliary forces would be "otherwise" (*i.e.*, as being in the regular forces) subject to military law.

4. This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a colonial Act, but under Imperial control. But strictly colonial forces are dealt with by s. 177. See further Ch. XI, para. 83.

5. See s. 178.

6. *Military service.* The term "military service" as here used cannot be satisfactorily defined without relation to the special circumstances of each particular case. In no circumstances, therefore, should a pensioner or reservist be considered as subject to military law under the provisions of paras. (4) and (5) (d) unless a definite decision to that effect has been obtained from the Army Council.

It has been decided that paid pensioner recruiters are in "military service" within the meaning of para. (4).

7. As to the power to try by court-martial a man of the Army Reserve who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

8. Paras. (9) and (10). See s. 184 for special provisions applicable to persons made subject to military law by these paragraphs.

9. See note 4 to s. 175, under which some of the persons indicated here might be subject to military law "as officers."

10. Members of the crew of a transport hired by the Government would not be persons "accompanying, &c."

177. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony,<sup>1</sup> any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without<sup>2</sup> the limits of India or the colony; and any such law may apply, in relation to such force and to any officers, non-commissioned officers, and men thereof, all or any of the provisions of this Act, subject to such adaptations, modifications, and exceptions as may be specified in such law, and where so applied this Act shall have effect in relation to such force subject to such adaptations, modifications, and exceptions as aforesaid; and where any such force is serving with part of His Majesty's regular forces,<sup>3</sup> then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers, and men of the regular forces.

This section shall not apply to any officer belonging to any such force when attached to or doing duty with, or to any non-commissioned officer or man belonging to any such force when attached to or otherwise acting as part of or with, any portion of the regular, reserve, or auxiliary forces in the United Kingdom.<sup>4</sup>

#### NOTE.

1. For definitions of *India* and *colony* see s. 190 (21), (23).

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony. Colonial legislatures can apply the whole of the Army Act, or any part of it, to the forces of the colony, subject to such adaptations as may be necessary to make them applicable.

2. So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

3. In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to any modification made by general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding the regular forces in question.

4. *This section shall not apply, &c.* The effect of this provision is that where the Army Act applies to colonial forces serving with the regulars (see, for instance, s. 175 (11) and s. 176 (8A)), it will apply to them as if they were regulars.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any reserve officers, or retired officers, or any pensioners,<sup>1</sup> are subject to military law in pursuance of this Act, and when non-commissioned officers and men belonging to the reserve forces<sup>2</sup> are subject to military law in pursuance of this Act, otherwise than when called out on permanent service, such officers, non-commissioned officers, men and pensioners shall be subject to this Act<sup>3</sup> in all respects<sup>4</sup> as if they were part of the

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Persons belonging to colonial forces, and subject to military law as officers or soldiers.

Mutual relations of regular forces and auxiliary forces.

Part V. regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces": Provided that ss. 178, 179. nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man, or of any pensioner.

#### NOTE.

1. Officers of the auxiliary forces, if on the active list, are subject to military law at all times (s. 175 (2) (3A)); N.C.Os., and men of the auxiliary forces and pensioners are so subject in cases specified in s. 176 (4), (8a), (8). As to reserve officers, see s. 175 (10); and as to retired officers see the latter part of s. 175 (1).

2. N.C.Os., and men of the Army Reserve are subject to military law in cases specified in s. 176 (5); when called out on permanent service they actually "form part of" the regular forces (s. 190 (8); Reserve Forces Act, 1882, s. 14 (2)). Consequently this contingency is omitted from the provision that they shall be subject to the Act "as if they were" part of such force.

3. As to command, rank and precedence of the officers mentioned in this section, see s. 71, and K.R. 170, *et seq.*

4. Under s. 158 a member of the Territorial Army who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed whilst he was so subject. See also T.R.F. Act, s. 25 (2).

Modification  
of Act with  
respect to  
Royal  
Marines.

179. In the application of this Act to His Majesty's Royal Marines the following modifications shall be made:—

- (1) Nothing in this Act shall prejudice any power of the Admiralty<sup>1</sup> to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used; and a general court-martial<sup>2</sup> for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man:
- (2) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces:
- (3)<sup>3</sup> Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act His Majesty may exercise by any warrant



or warrants, may be exercised in His Majesty's name by a warrant or warrants from the Admiralty; and any such warrant may be addressed to any officer to whom any warrant of His Majesty can be addressed: Part V.  
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- (4)<sup>3</sup> Any power vested by this Act in His Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty:
- (5)<sup>3</sup> Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised<sup>4</sup> under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces:
- (6) Any power vested in His Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for His Majesty, as well as for the Secretary of State and the Army Council:
- (7) Anything required or authorised by this Act to be done by, to, or before a Secretary of State, the Army Council, or Judge Advocate General, may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Army Council," and "Judge Advocate General," wherever those words occur:
- (8) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere, may as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer:
- (9) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by Warrant of the Admiralty, and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act:
- (10) Anything authorised to be done by the deputy of the Judge Advocate General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty:

**Part V.** (11) In the provisions of this Act with respect to evidence,  
 — the expression " King's Regulations " shall be deemed  
**s. 179.** to include Admiralty Regulations :

- (12) Nothing in the provisions of this Act relating to the term of enlistment,<sup>5</sup> to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines :

Save that if regulations made by the Army Council and the Admiralty provide for the transfer of men of the Royal Marines to any other part of His Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations shall become a soldier of the said part of His Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act :

And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of His Majesty's regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines :

- (13) A marine on his re-engagement shall make a declaration, either before a justice of the peace or person having under this Act the same authority as a justice of the peace, for the purposes of enlistment, or before a naval officer commanding any ship commissioned by His Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty :
- (14) A man in the Royal Marines shall for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines :
- (15) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by His Majesty (unless made subject to military law as hereinafter provided),<sup>6</sup> shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy :

Provided that—

- (a) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having

any relations with any such officer or man of the Royal Marines or to any such officer or man if found on shore as a deserter or absentee without leave<sup>1</sup>; and

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- (b) If any such officers or men of the Royal Marines are employed on land,<sup>2</sup> the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly :
- (16) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by His Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act :
- (17) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence<sup>3</sup> committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by His Majesty :
- (18) Where any officer or man of the Royal Marines is on board any ship commissioned by His Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as His Majesty by Order in Council from time to time directs, and, so far as he does not so direct, as is for the time being directed by Order in Council with respect to the other regular forces :
- (19) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a military prison for the purposes of this Act relating to imprisonment, and the Admiralty shall not have any authority to establish any military prison under this Act :
- (19A) For the purposes of the attestation of men of the Royal Marines the expression " officer " in section ninety-four of this Act includes an officer of the Royal Navy.<sup>10</sup>
- (20) In this section the expression " Admiralty " means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them :
- (21) The expression " man of the Royal Marines " includes a non-commissioned officer of the Royal Marines ; and also a Marine raised or enrolled under the Naval Reserve Act, 1900, or the Naval Forces Act, 1903, when called into actual service and when being trained or exercised.

#### NOTE.

1. As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the Navy, the powers which by this Act are vested in His Majesty in relation to the Army are by this section given to the Admiralty.

2. This paragraph prevents an officer of the Army from convening a general court-martial for the trial of an officer or man in the Marines except in the

Part V. circumstances here mentioned. The confirmation is provided for by paras. (4) and (5). See K.R. 873 as to the procedure to be followed when it is decided to try an officer or man of the Marines serving at home by general court-martial under the Army Act.

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3. Paras. (3)-(5). These confer on the Admiralty the power of convening and of confirming the findings and sentences of general courts-martial, and of conferring by warrant on officers the power to convene, and to confirm the findings and sentences of, both general and district courts-martial.

4. Para. (5) provides that, in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces.

5. The formalities in the enlistment of the Marines will be those contained in Part II of this Act (see ss. 80, 81), but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the Marines; 10 & 11 Vict. c. 63; 20 Vict. c. 1.

6. (Unless made subject to military law as hereinafter provided.) See proviso (b).

7. This proviso refers to ss. 154 and 156. See also note 3 to s. 18.

8. *Employed on land.* This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

9. *Offences.* This means an offence punishable under this Act.

10. This paragraph permits officers of the Navy who are appointed by the Admiralty as recruiting officers to attest recruits for the Marines.

Attaching of  
officers and  
soldiers to  
the air force,  
and provisions  
as to  
officers and  
airmen  
attached to  
the regular  
forces.

179A.—(1) The Army Council may direct from time to time that any officers or soldiers of the regular forces shall, under such conditions as may be prescribed by regulations made by the Army Council and the Air Council, be temporarily attached to the air force.

(2) Where an officer or airman of the air force is attached to, or seconded for service with, the regular forces, this Act shall apply to him, subject to the following modifications :—

\* \* \* \* \*

(c) The finding and sentence of any general court-martial for the trial of any such officer or airman may be confirmed by His Majesty, or by an officer authorised to confirm the findings and sentences of general courts-martial under the Air Force Act, and not otherwise, except that when such officer or airman while subject to this Act is serving beyond the seas with a military force, and in the opinion of the general or other officer commanding that force (such opinion to be stated in the confirmation and to be conclusive) there is not present any officer authorised to confirm the findings and sentences of general courts-martial under the Air Force Act, the findings and sentences may be confirmed by a general or other officer authorised to confirm findings and sentences of general courts-martial under this Act ;

(d) Anything required or authorised by this Act to be done by, to, or before the Army Council or Judge Advocate General may as regards any such officer or airman be done by, to, or before the Air Council ; and the provisions of this Act shall be construed, so far as respects any such officer or airman, as if " the Air Council " were substituted for " the Army Council " and " Judge Advocate General " wherever those words occur

- (e) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere, may as regards any such officer or airman be done by, to, or before such officer as the Air Council may appoint in that behalf, and, if no such appointment is made, by such Commander-in-Chief or general or other officer ;
- (f) If any such officer or airman commits an offence for which he is not amenable under this Act, but for which he can be punished under the Air Force Act, he may be tried and punished for such offence under that Act ;
- (g) The power of a court-martial to inflict on an officer the punishment of forfeiture of seniority of rank shall include power to inflict a punishment of forfeiture of seniority of rank in the air force or any corps or unit thereof or both.

## NOTE.

This section was added by the Air Force (Constitution) Act, 1917.

Under the section members of the regular forces may be temporarily attached to, or seconded for service with, the Air Force, and when so attached or seconded air force law applies to them, subject to the modifications contained in s. 179A of the Air Force Act.

Conversely, by the last-named section, members of the regular Air Force may be temporarily attached to the military forces, and when so attached or seconded the Army Act applies to them (ss. 175 (1A) and 176 (1A)), subject to the modifications contained in s. 179A of the Army Act.

"Attachment" is a personal attachment. Units, as such, cannot be attached, but a unit could in effect be made subject to military law (or air force law) by attachment of the individual officers and men of the unit under s. 179A of either Act. Under s. 184A (1A) personnel of a body of the Air Force serving with a body of the military forces on active service may be made subject to military law as if they were officers and airmen attached to the Army, and conversely under the Air Force Act.

The regulations relating to attachments, referred to in subs. (1), are set out at pp. 810-813.

The modifications above referred to consist of stipulations in regard to *general courts-martial*. A general court-martial held under the Army Act for the trial of a member of the Air Force attached to the military forces, though convened by an officer of the Army, will be confirmed by His Majesty (being referred by the military authorities to the air force authorities for that purpose) or by an officer authorised to confirm the findings and sentences of general courts-martial under the Air Force Act, except that overseas, in stated circumstances, confirmation may be effected by a general or other officer authorised to confirm findings and sentences of general courts-martial under the Army Act. In the case of military personnel attached to the Air Force the converse procedure applies.

The following examples are given by way of illustration:—

- (a) An air force officer while attached to the Army commits an offence against the Army Act; the army commanding officer investigates the charge and signs the charge-sheet; an army officer convenes a general court-martial under the Army Act; an air force officer (or His Majesty) confirms.
- (b) Conversely, an army officer while attached to the Air Force commits an offence against the Air Force Act; the air force commanding officer investigates the charge and signs the charge-sheet; an air force officer convenes a general court-martial under the Air Force Act; an army officer (or His Majesty) confirms.

As the modifications above mentioned apply only to *general courts-martial*, it follows that they do not apply to field general or district courts-martial, and consequently such courts for the trial of air force personnel attached to the Army may not only be convened by army officers but may also be confirmed by a military authority empowered to confirm findings and sentences under the Army Act.

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s. 179A.

**Part V.** As regards members of the Air Force attached to the Army, all powers of remission, mitigation and commutation of sentences under s. 57 (2) of the Army Act are exercisable by the Air Council in lieu of the Army Council by virtue of s. 179A (2) (d) of the Army Act. The converse applies in the case of military personnel attached to the Air Force.

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98.  
179A-180

If a sentence is invalid it may, in the case of a general court-martial held on a member of the Air Force attached to the Army, be quashed by a competent air force authority, or by the Air Council; and in the case of a field general or district court-martial by a competent military authority (see K.R. 665), or by the Army Council. The converse applies in the case of military personnel attached to the Air Force.

If a member of the Air Force attached to the military forces commits an offence for which he is not amenable under the Army Act, but for which he can be punished under the Air Force Act, he may be tried and punished under the last-mentioned Act; he will be handed over to an air force authority for investigation of the case and disposal.

If attachment of a member of the Air Force to the military forces has ceased, and subjection to military law consequently terminated, such member will still remain amenable to military law in respect of any offence against the Army Act committed whilst so subject; see s. 158 (1) proviso. In such case the offender will be handed back to the military authorities for investigation of the case and disposal.

**Provision as to naval officers subject to military law.** 179B. In the application of this Act to officers of His Majesty's naval forces who are subject to military law, the power of a court-martial to inflict the punishment of forfeiture of seniority of rank shall include power to inflict the punishment of forfeiture of seniority of rank in the navy.

**Modification of Act with respect to His Majesty's Indian forces.**

180.—(1) In the application of this Act to His Majesty's forces when serving in India the following modification shall be made :—

A court-martial may take the same proceedings for the punishment of a person not subject to military law, who in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt<sup>1</sup> of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2) In the application of this Act to His Majesty's Indian forces the following modifications shall be made :—

(a) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in His Majesty's Indian forces, being natives of India<sup>2</sup>; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act :

(b) For the purposes of this Act the expression " Indian military law " means the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving :

- (c) The Governor-General in India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to His Majesty's Indian forces : Part V.  
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s. 180.
- (d) An officer belonging to His Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain<sup>3</sup> to the Governor-General of India, who shall cause his complaint to be inquired into, and if so desired by the officer, make a report through a Secretary of State to His Majesty in order to receive the directions of His Majesty thereon :
- (e) A court-martial, or, where the case is dealt with summarily under the provisions of this Act, the authority having power so to deal with the case, may sentence an officer of the Indian Forces to forfeit all or any part of his service for the purposes of promotion, and in addition, if the court or authority thinks fit, to be severely reprimanded or reprimanded :
- (f) The Governor-General of India may reduce any warrant officer to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer :
- (g) The provisions of this Act relating to warrant officers shall apply to hospital apprentices in India although not appointed by warrant :
- (h) Part Two of this Act shall not apply to His Majesty's Indian forces, but persons may be enlisted and attested in India<sup>4</sup> for medical service or for other special service in His Majesty's Indian forces for such periods, by such persons, and in such manner, as may be from time to time authorised by the Governor-General of India.
- (3) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

## NOTE.

1. For the power of an Indian court to institute proceedings in respect of offences committed in or in relation to proceedings in the court, see the Indian Code of Criminal Procedure, 1908, Ch. XXXV.

2. *Natives of India.* See definition in s. 190 (22).

A court-martial on a person subject to the Indian Army Act must accord with the provisions of that Act, but under this subsection may be convened by an officer authorised to convene a court-martial under the Army Act. It will be observed that the Indian Army Act is by this subsection made applicable to persons subject to that Act wherever they are serving.

3. See s. 42 and note. European officers of the Indian Army upon attaining substantive rank higher than that of lieutenant-colonel cease to belong to the Indian Army, and their right of complaint then lies under s. 42.

4. Europeans cannot be enlisted for service in India only, except under the provisions of this subsection which permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General.

It will be noted that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in His Majesty.

**Part V.** 181.—(1) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of His Majesty's auxiliary forces, except so far as such person enlists<sup>1</sup> or enrolls himself, or attempts to enlist or enrol himself in the regular forces or in a force raised in India or a colony, and except so far as the said provisions<sup>2</sup> may be applied by any other Act.

Modification  
of Act with  
respect to  
auxiliary  
forces.

(2) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3) The provisions of this Act with respect to billeting and impressment of carriages<sup>3</sup> shall apply to His Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification.

(4) An order issued and signed as a route or an order signed by the officer commanding the unit of the territorial army, or the battalion or corps of volunteers, shall be substituted for a route,—

- (a) In the case of any man of the territorial army attending for his preliminary training; and
- (b) In the case of any officer, non-commissioned officer, or man of the territorial army assembled for training and exercise at the place in the United Kingdom appointed by His Majesty in that behalf, or when called out for actual military service for purposes of defence in the United Kingdom; and
- (c) In the case of any officer, non-commissioned officer, or man of the territorial army embodied under an order of His Majesty, who has joined his corps at the place appointed for his assembling; and
- (d) In the case of any officer, non-commissioned officer, or man of the volunteers attending at the place at which his corps is required to assemble;

and an order to billet such officer, non-commissioned officer, or man purporting to be signed in manner required by this Act in the case of a route, or by the officer commanding a unit of the territorial army, or a battalion or corps of volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the territorial army or volunteers shall be a sufficient authority to such officer, non-commissioned officer, or man to demand billets; and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order.

(5) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold, the office of sheriff,<sup>4</sup> mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which



he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.<sup>5</sup> **Part V.**

(6) When a member of the volunteers or the territorial army, being a non-commissioned officer or private, is subject to military law, a dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act. **ss. 181, 182.**

#### NOTE.

1. *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 13; for that of unauthorised enlistment, see ss. 32, 33, and 99.

2. *Except so far as the said provisions.* This refers, e.g., to the application of the procedure for enlistment to enlistment into the Territorial Army; T.R.F. Act, s. 10.

3. *Billeting and impressment of carriages.* See Part III of the Act.

4. If a sheriff is an officer of the Territorial Army at the time when his corps is embodied, he is discharged from performing personally the office of sheriff, and the under-sheriff is to perform the duty (T.R.F. Act, s. 23 (3)).

5. The seat of a member of Parliament is not vacated by the acceptance of a commission in the Territorial Army; and a person in the Territorial Army is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the Territorial Army cannot be compelled to serve as a peace officer, or as a parish officer (T.R.F. Act, s. 23 (4)). As to an officer or man of the Territorial Army being exempt from serving on any jury, see Ch. XII, para. 9, and T.A. Regs. 480-488.

182. The provisions of this Act shall apply to a warrant officer<sup>1</sup> in like manner as if he were a non-commissioned officer,<sup>2</sup> subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications:— **Special provisions as to warrant officers.**

(1) He shall not be punished<sup>3</sup> by his commanding officer<sup>4</sup> nor sentenced by a district court-martial to any punishment not in this section mentioned:—

(2) He may be sentenced—

(a) by a district court-martial<sup>5</sup> to be reprimanded or severely reprimanded, or to such forfeitures, fines and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any), or to be reduced to a lower grade, or if he was originally enlisted as a soldier, but not otherwise, to the ranks; or

(b) by any court-martial having power to try him, other than a district court-martial, to any punishment which under this section a district court-martial has power to award, either in addition to or in substitution for any other punishment; or

(c) to the punishments prescribed in that behalf under section forty-seven of this Act by the authorities referred to in that section.

(3) A warrant officer reduced to the ranks or remanded to regimental duty in the rank of private shall not be required to serve in the ranks as a soldier:

**Part V.** (4) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

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ss.  
182, 183.

**NOTE.**

1. This section makes the Act apply, subject to certain modifications, to warrant officers as if they were N.C.Os. Warrant officers cannot be summarily punished by a C.O. See, however, s. 47, with regard to summary disposal of offences committed by warrant officers.

2. The Army Council and certain other specified authorities can reduce a warrant officer under s. 183 (2) as applied by this section. If, however, the ground is some misconduct which is an offence against the Act, he should, as a rule, be put on trial before a court-martial.

3. A private soldier or N.C.O. who holds the "acting" rank of warrant officer, class I or class II, may be reverted to his permanent rank by his C.O. for an offence or otherwise.

A warrant officer, class II, who holds the acting rank of warrant officer, class I, may, with the sanction of an officer not below the rank of brigadier, be reverted to his permanent rank by his C.O., but not by way of punishment for an offence. See K.R. 273.

4. In this and the next section, the commanding officer is the commanding officer as defined by R.P. 129. See K.R. 526.

5. A district court-martial can only sentence a warrant officer to the punishments mentioned in para. (a); but a general or field general court-martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers. See note 9 to s. 44.

Special provisions as to non-commissioned officers.

183. In the application of this Act to a non-commissioned officer<sup>1</sup> the following modifications shall apply:—

- (1) The obligation<sup>a</sup> on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness:
- (2) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, and on active service the officer commanding-in-chief in the field, and any general officer or brigadier he or the Army Council may appoint, may reduce<sup>b</sup> any non-commissioned officer to any lower grade or to the ranks:<sup>4</sup>
- (3) A non-commissioned officer may, by the sentence of a court-martial, be ordered to forfeit seniority of rank<sup>b</sup> or be reduced<sup>c</sup> to any lower grade or to the ranks,<sup>6</sup> either in addition to or without any other punishment, in respect of an offence:
- (4) A non-commissioned officer sentenced by court-martial to penal servitude, field punishment, imprisonment or detention shall be deemed<sup>7</sup> to be reduced to the ranks:

Provided that—

- (a) An instructor, Army Educational Corps shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude, imprisonment or detention<sup>a</sup> or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment shall be deemed to be dismissed; but

- (b) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, may dismiss an instructor, Army Educational Corps; Part V.  
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ss.  
183, 184.
- (c) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert<sup>a</sup> to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.<sup>b</sup>

## NOTE.

1. *Non-commissioned officer.* See definition in s. 190 (5).
2. *Obligation.* See s. 46 (3).
3. Paras. (2), (3), and proviso (c). Except in India or on active service a N.C.O. can only be reduced by the Army Council or by sentence of a court-martial; but inasmuch as the term "non-commissioned officer" includes acting N.C.O. (see s. 190 (5)), it is provided by proviso (c) that a soldier having acting rank only may be ordered by his C.O., for an offence or for any other cause, to revert to his permanent grade, or, if he has no permanent grade as N.C.O., to the ranks. As to reduction of N.C.Os. convicted by the civil power, see K.R., 573. As to reduction of a N.C.O. removed from an appointment, see K.R., 274.
4. A warrant officer or N.C.O. reduced under para. (2) cannot claim a trial by court-martial.  
When a N.C.O. is reduced to the ranks under para. (2), the date from which the reduction is to take effect should be specified in the order. See K.R. 276.
5. *Ordered to forfeit seniority of rank.* See note 12 to s. 44.
6. Para. (3) must be read in conjunction with K.R. 255, defining what are ranks. Lance and acting rank is a matter to be dealt with entirely by the C.O., and not being legally a rank under the K.R. is not cognisable in the sentence of a court-martial. Therefore a sentence of reduction from or to lance rank, e.g., from or to the rank of lance-serjeant or lance-corporal, is inoperative. But a lance-corporal, being a N.C.O., loses his lance rank under para. (4) upon being sentenced to any of the punishments therein mentioned.  
Though a sentence of reduction from or to acting or lance rank is inoperative, nevertheless certain other punishments peculiar to a N.C.O. may be awarded to a soldier holding such appointments, i.e., reprimand or severe reprimand. See s. 44 (mm).
7. Although under this paragraph a N.C.O. holding substantive rank, when sentenced to penal servitude, imprisonment, detention, or field punishment, is, *ipso facto*, reduced to the ranks, it is desirable to specify the reduction in the sentence. See R.P., App. II, p. 758.
8. This proviso allows an instructor, Army Educational Corps, to be sentenced to penal servitude, imprisonment, or detention, although he cannot be reduced to the ranks unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer. It does not of course prevent the infliction of any less punishment than detention.
9. When an acting N.C.O. has been punished by court-martial for an offence, and such punishment does not involve reduction or reversion, his C.O. can nevertheless revert him to his permanent grade, not as a further punishment, but because the proceedings show him to be unfit to hold his appointment.

184. In the application of this Act to persons who do not belong to His Majesty's forces,<sup>1</sup> the following modifications shall be made:—

- (1) Where an offence has been committed by any person subject to military law who does not belong to His Majesty's forces, such persons may be tried by any

Special provisions as to application of Act to persons not belonging to His Majesty's forces.

## Part V.

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184, 184A

description of court-martial convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried, and on conviction dealt with and punished accordingly :

- (2) Any person subject to military law who does not belong to His Majesty's forces shall, for the purposes of this Act relating to offences,<sup>3</sup> be deemed to be under the command of the commanding officer of the corps or portion of a corps (if any) to which he is attached, and if he is not attached to any corps or a portion of a corps under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer :

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present, at the place where such person is, any officer of higher rank under whose command he can be placed.

## NOTE.

1. This section provides for the trial by court-martial of a person who does not belong to either the regular or the auxiliary forces, but who is subject to military law under either s. 175 (7) and (8) or s. 176 (9) and (10).

2. This paragraph has reference to certain offences, see ss. 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and R.P. 129.

Relations  
between  
military and  
naval and  
air forces  
acting to-  
gether.

184A.—(1) Where an officer or petty officer in the navy is a member of a body of His Majesty's naval forces acting with or is attached to any body of His Majesty's military forces under such conditions as may be prescribed<sup>3</sup> by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's military forces as aforesaid, be treated and have all such powers (other than powers of punishment) as if he were a military officer or non-commissioned officer as the case may be.

(1A). Where an officer or non-commissioned officer of the air force is a member of a body of His Majesty's air force acting with any body of His Majesty's military forces under such conditions as may be prescribed<sup>3</sup> by regulations made by the Army Council and the Air Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's military forces as aforesaid, be treated, and have all such powers (other than powers of punishment), as if he were a military officer or non-commissioned officer, as the case may be :

Provided<sup>3</sup> that under regulations made by the Army Council and Air Council the officers and airmen of a body of the air force

acting with any body of His Majesty's military forces on active service, or any such officers or airmen, may, in such manner and in such circumstances, and subject to such conditions as may be provided by or under those regulations, be made subject to military law, and in such case they shall be subject thereto in like manner as if they were officers and airmen attached to the Army. Part V.  
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s. 184A.

(2) Where any officer or soldier is a member of a body of His Majesty's military forces acting with or is attached to any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Army Council and the Admiralty, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and petty officers of such naval body shall, in relation to him, be treated and have all such powers (other than powers of punishment) as if they were military officers or non-commissioned officers.

(2A) Where any officer or soldier is a member of His Majesty's military forces acting with any body of His Majesty's air force under such conditions as may be prescribed by regulations made by the Army Council and the Air Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers of such body of the air force shall, in relation to him, be treated, and have all such powers (other than powers of punishment), as if they were military officers or non-commissioned officers.

(3) The relative rank<sup>4</sup> of naval and military and air force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force.

#### NOTE.

1. This section was introduced by the Army (Amendment) Act, 1915, and additions have since been made.

The section, and those below mentioned, provide for the powers of command and discipline mutually exercisable by and over officers and other ranks of the various services where bodies of the Army and Navy or of the Army and Air Force are acting together.

The section must be read in conjunction with s. 90A of the Naval Discipline Act or s. 184A of the Air Force Act, as the case may be, which will be found on pp. 809, 813-4. The effect of the combined sections is that where personnel of the Army and of the Navy, or Air Force, are acting together and the "prescribed conditions" are fulfilled, then (in brief):—

- (a) The officers and petty officers of the naval contingent, or the officers and N.C.Os. of the Air Force, as the case may be, have the same powers of command and discipline (but not of punishment) over military officers and men as they would have if they were themselves military officers and N.C.Os. of ranks corresponding to their own; conversely—
- (b) Military officers and N.C.Os. have similar powers over air force personnel, and military officers and N.C.Os. not below the rank of serjeant have similar powers over naval personnel.

2. The "prescribed conditions" at present in force are set out on pp. 809-810 and 813-817.

3. The proviso to subs. (1A) applies only as between the military and air forces. Under the proviso, personnel of a body of the Air Force serving with a body of the military forces on active service may be made subject to military law as if they were officers and airmen attached to the Army; and conversely under the Air Force Act.

4. A table of relative ranks will be found in K.R. 878.

## Part V.

*Saving Provisions.*

35.  
185-187.

Special provisions as to prisoners and prisons in Ireland.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board.

**NOTE.**

The Government of Ireland (Adaptation of Enactments) (No. 3) Order, 1922, provides that this Section shall not apply to Northern Ireland, and that in lieu thereof the following provision shall have effect:—

“The jurisdiction and powers of the Secretary of State under the Army Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall extend to Northern Ireland, but shall be exercised only subject to the approval of the Ministry of Home Affairs for Northern Ireland.”

As regards the Irish Free State, see note 10 to s. 190.

Saving of Naval Discipline Act as to forces when on board His Majesty's ships.

186. Nothing in this Act shall affect the application of the Naval Discipline Act or any Order in Council made thereunder, to any of His Majesty's forces when embarked on board any ship commissioned by His Majesty, and the auxiliary forces shall be deemed to be part of His Majesty's forces within the meaning of that Act.

**NOTE.**

By s. 88 of the Naval Discipline Act, His Majesty's land and air forces when embarked on board any of His Majesty's ships shall be subject to the provisions of that Act to such extent and under such regulations as His Majesty shall by Order in Council direct. The Order in Council now in force will be found at p. 818 *et seq.*

See also notes to s. 188.

*Definitions.*

Application of Act to Channel Islands and Isle of Man.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom,<sup>1</sup> subject to the following modifications:—

- (1) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man:
- (2) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude, imprisonment or detention, and to prisons and detention barracks, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude, imprisonment or detention, passed in any of those islands shall be deemed to have been passed in a colony<sup>2</sup>:
- (3) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies;

- (4) For the purposes of the provisions of this Act relating to Part V. the militia the Isle of Man shall be deemed to be a colony. —

ss.  
187-189.

NOTE.

1. Ordinarily, the term "United Kingdom" does not include either the Channel Islands or the Isle of Man.

The effect of para. (1) is to exclude those islands from the operation of Part III of the Act (ss. 102-121).

2. The effect of this is to require persons sentenced to penal servitude, imprisonment, or detention in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See ss. 59 and 64.

187A. This Act shall apply in relation to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty in like manner as it applies in relation to a British Protectorate. Application of Act in relation to mandated territories.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation. Application of Act to ships.

NOTE.

Army courts-martial are not held on board His Majesty's ships (s. 186); but by virtue of this section, when soldiers are embarked on a ship not commissioned by His Majesty, an officer holding a warrant to convene courts-martial at the place of such embarkation will be able to convene a court-martial on board the ship, and for this purpose a district court-martial warrant is given before sailing to the officer in command (K.R. 1091). If a soldier is tried on board the ship for an offence committed either before embarkation or on board, the sentence, if not confirmed on board, can be confirmed at the place of disembarkation by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place, and it can be executed there.

As to troops on board a ship being "on active service" even before actual departure for the area of operations, see note 1 to s. 189.

Where troops on board are on active service, their C.O. can also (without any warrant) convene a field general court-martial (s. 49).

189.—(1) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of<sup>1</sup> a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country. Interpretation of term "on active service."

(2) Where the governor of a colony<sup>2</sup> in which any of His Majesty's forces are serving, or if the forces are serving out of His Majesty's dominions, the general officer or brigadier commanding such forces, declares<sup>3</sup> at any time or times that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the

**Part V.** forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

—  
s. 189.

(3) If at any time during the said period the governor or general officer or brigadier for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer or brigadier making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5) The Secretary of State may, if he thinks fit, annul a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

(6) Where any such forces so serving out of His Majesty's Dominions are under the command of an air officer the powers exercisable under this section by a general officer or brigadier shall be exercisable by such air officer, and this section shall apply accordingly.

#### NOTE.

1. Even before embarkation troops under orders to proceed to the seat of war are attached to, or form part of, a force which is engaged in operations against the enemy, and therefore, under s. 188, can, when on board a transport *en route* for the seat of war, be considered as on active service.

2. For definition of *colony*, see s. 190 (23).

3. It will be observed that the power given by this section to anticipate, or prolong, as it were, the period of active service is given to the governor in a colony, and to the general officer or brigadier when out of the King's dominions (or to an air officer when in command of the forces). The declaration of the governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.



190. In this Act, if not inconsistent with the context, the following expressions have the meanings<sup>1</sup> hereinafter respectively assigned to them ; that is to say,

Part V,  
—  
s. 190.

- (1) The expression " Secretary of State " means one of His Majesty's Principal Secretaries of State :
- (2) The expression " Lord Lieutenant of Ireland " includes the lords justices or other chief governor or governors of Ireland :
- (3) The expression " Commander-in-Chief " means the field-marshal or other officer commanding in chief His Majesty's forces for the time being :
- (4) The expression " officer "<sup>2</sup> means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof ; it also includes a person who, by virtue of his commission, is appointed to any department, or corps of His Majesty's forces, or of any arm, branch, or part thereof ; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's said forces, or of any arm, branch, or part thereof ; it also includes any officer of His Majesty's naval or air forces who is for the time being subject to military law :

Interpretation of terms,

- Officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned :
- (5) The expression " non-commissioned officer " includes an acting non-commissioned officer, but save as is in this Act mentioned does not include a warrant officer :
  - (6) The expression " soldier "<sup>3</sup> does not include an officer as defined by this Act, but, with the modifications<sup>4</sup> in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer and a non-commissioned officer, and every person subject to military law during the time that he is so subject :
  - (7) The expression " superior officer," when used in relation to a soldier, includes a warrant officer, and also includes a non-commissioned officer as above defined :
  - (8) The expressions " regular forces "<sup>5</sup> and " His Majesty's regular forces " mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to His Majesty in every part of the world, or in any specified part of the world, including soldiers of the reserve forces when called out on permanent service, and including, subject to the modifications in this Act mentioned, the Royal Marines and His Majesty's Indian forces, and the Royal Malta Artillery :
  - (9) The expression " reserve forces " means the army reserve force including the militia :

(Paragraphs (10) and (11) were repealed by the Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), and that Act omitted (s. 28) that in the Army Act the expression " army reserve force " should mean the army reserves under the Reserve Forces Act, 1882.)

Part V. (12) The expression "auxiliary forces" means the territorial army and the volunteers :

s. 190. (Paragraph (13) repealed by T.A. & M. Act, 1921.)

(Paragraph (14) repealed by A. & A.F. (A) Act, 1927.)

- (15) The expression "corps"<sup>6</sup> means any such body of His Majesty's military forces as may from time to time be declared by Royal Warrant to be a corps for the purposes of this Act ; so, however, that the Royal Marine forces (in this Act referred to as the Royal Marines) shall be formed into a separate corps ; and where a corps comprises units of the territorial army belonging to two or more counties, the corps shall, for the purposes of section nine of the Territorial and Reserve Forces Act, 1907, be deemed to be a corps for each such county :
- (16) The expression "battalion" in the application of this Act to cavalry, artillery, or engineers shall be construed to mean regiment, brigade, or other body into which His Majesty may have been pleased to divide such cavalry, artillery, or engineers :
- (17) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps :
- (18) The expression "decoration" means any medal, clasp, good-conduct badge, or decoration :
- (19) The expression "military reward" means any gratuity<sup>7</sup> or annuity for long service or good conduct ; it also includes any good-conduct pay or pension and any other military pecuniary reward :
- (20) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :
- (21) The expression "India"<sup>8</sup> means British India, together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India ; and the expression "British India" means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India :
- (22) The expression "native of India" means a person triable and punishable under Indian military law as defined by this Act :
- (23) The expression "colony"<sup>9</sup> means any part of His Majesty's dominions exclusive of the British Islands<sup>10</sup> and of British India, and includes Cyprus, and any British protectorate and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :

- (24) The expression "foreign country"<sup>11</sup> means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas : Part V.  
—  
s. 190.
- (25) The expression "beyond the seas"<sup>12</sup> means out of the United Kingdom, the Channel Islands, and Isle of Man ; and the expression "station beyond the seas" includes any place where any of His Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :
- (26) The expression "governor-general" in its application to India means the Governor-General of India in Council :
- (27) The expression "governor" in its application to a colony means the Governor-General, Governor, High Commissioner, or Commissioner, and includes the lieutenant-governor or other officer administering the government of the colony :
- (28) The expressions "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :
- (29) The expression "superior court," in the United Kingdom means His Majesty's High Court of Justice in England, the Court of Session in Scotland, and His Majesty's High Court of Justice at Dublin :
- (30) The expression "supreme court" means, as regards India, any high court or any chief court ; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :
- (31) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :
- (32) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :
- (33) The expression "misdemeanor" as far as regards Scotland, means a crime or offence, and so far as regards India, means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :
- (34) The expression "Summary Jurisdiction Acts"<sup>13</sup>— "Summary  
Jurisdiction  
Acts."
- (a) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879 ;
  - (b) As regards Scotland, means the Summary Procedure Act, 1864,<sup>14</sup> and any Acts amending the same ; and
  - (c) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :

**Part V. (35) The expression " court of summary jurisdiction " <sup>12</sup>—**

**s. 190.**  
 "Court of  
 summary  
 jurisdiction."

- (a) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 ; and
  - (b) As regards Ireland means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to ; and
  - (c) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court ; or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1884 ; <sup>13</sup> and
  - (d) As regards India, a colony, the Channel Islands and Isle of Man, means the court, justices or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable :
- (36) The expression " court of law " includes a court of summary jurisdiction :
- (37) The expression " county court judge " includes—
- (a) In the case of Scotland, the sheriff or sheriff substitute ; and
  - (b) In the case of Ireland, the judge of the Civil Bill Court :
- (38) The expression " constable " includes a high constable and a commissioner, inspector or other officer of police :
- (39) The expression " police authority " means the commissioner, commissioners, justices, watch committee or other authority having the control of a police force :
- (40) The expression " horse " includes a mule, and the provisions of this Act shall apply to any beast of whatever description, used for burden or draught or for carrying persons in like manner as if such beast were included in the expression " horse " :
- (40A) The expression " carriage " means a vehicle for carriage or haulage other than one specially constructed for use on rails :
- (41) " Airman " has the same meaning as in the Air Force Act.

**NOTE.**

1. It may be observed that under the Interpretation Act, 1889, in the construction of every Act of Parliament, unless the contrary intention appears, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. This enactment, however, does not apply to documents not Acts of Parliament, and therefore in any such document, e.g., a warrant, "oath" will not include affirmation, &c., but under R.P. 134 (C) "month" in a sentence of imprisonment, detention, or field punishment, means, unless the contrary is expressed, a calendar month. Throughout the Act a year means twelve calendar months and may be held to commence on any day in any month.

2. *Officer.* This includes half-pay and every other description of officer, though not subject to military law under s. 178.

A woman cannot be an "officer" within the meaning of the Act. Any honorary rank conferred, even though accompanied by a commission, is a mere matter of honour and dignity. She might be "liable as" an officer. **Part V.**

3. *Soldier*. This expression practically includes all persons subject to military law other than officers. **s. 190.**

A warrant officer is in general a "soldier" (para. (6)), but is not a "non-commissioned officer" (para. (5)).

4. *Modifications*. See ss. 182, 183.

5. *Regular Forces*. This definition includes the Marines. The distinction between the regular and other forces is that the regular forces are liable to serve *continuously* in every part of the world, or in any specified part of the world. Officers of the Regular Army Reserve of Officers do not, therefore, fall within this definition, whether called to army service or not. Reservists become soldiers of the regular forces when called out on permanent service. When called out for training and exercise, or for duty in aid of the civil power, they remain reservists but are subject to military law.

6. *Corps*. As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to His Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act. See the Warrant now in force (Army Order 46 of 1926 as amended by subsequent Army Orders), and Ch. XI, paras. 3-5.

7. A war gratuity is thus a "military reward."

8. *India*. It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes as well as "British India"—that is to say, all territories and places in H.M.'s dominions governed through the Governor-General of India.

9. *Colony*. India is not treated as a colony for the purposes of the Act. As regards the Irish Free State, see note 10 below.

The reference to a central legislature refers to such a case as Canada, where the Dominion Parliament assembled at Ottawa is the central legislature, and the provincial Parliaments for the provinces of Quebec, Ontario, &c., are local legislatures. Under the definition, the whole of Canada being under one central legislature will be one colony, and the provinces of Quebec, Ontario, &c., will be parts of that colony, and not separate colonies, for the purposes of the Act. Similarly the whole of the Commonwealth of Australia (see 63 & 64 Vict. c. 12) will be one colony, and Victoria, New South Wales, &c., will not be separate colonies for the purposes of the Act.

10. The term "British Islands" means the United Kingdom, the Channel Islands and the Isle of Man (Interpretation Act, 1889, s. 18 (1)).

The term "United Kingdom" means ordinarily England, Wales, Scotland and Northern Ireland, and neighbouring islands other than the Channel Islands and the Isle of Man; but for the purposes of this Act it includes the Channel Islands and the Isle of Man, with the exception that (a) Part III (billeting and impressment of carriages) has no application to them; and (b) they are treated as "colonies" for the purposes of provisions as to prisons and detention barracks, and execution of sentences of penal servitude, imprisonment or detention (s. 187).

*Irish Free State*.—By the provisions of the Irish Free State (Constitution) Act, 1922, the Irish Free State was granted the same constitutional status in the British Empire as Canada, Australia, New Zealand and the Union of South Africa, and subject to certain provisions (which do not affect the Army Act), the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise is that of the Dominion of Canada.

An Order in Council of 27th March, 1923 (entitled The Irish Free State (Consequential Adaptation of Enactments) Order, 1923), enacted that, subject to certain provisions (which do not affect the Army Act), references in any enactment passed *before* the establishment of the Irish Free State to the "United Kingdom," "United Kingdom of Great Britain and Ireland," "Great Britain and Ireland," "Great Britain or Ireland," "British Islands," or "Ireland," shall, in the application of the enactment to any part of Great Britain and Ireland other than the Irish Free State, be construed as exclusive of the Irish Free State.

The position of the Irish Free State in relation to the Army Act is therefore as follows:—

The Army Act applies to the Irish Free State in exactly the same manner as it applies to the Dominion of Canada. That is, for the purposes of the Act the Irish Free State is a "colony" and is "beyond the seas." It is not part of the "United Kingdom," or "Ireland," and

references in the Act to "Ireland" and the "United Kingdom must be construed as *exclusive* of the Irish Free State.

11. *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, and the colonies as defined in s. 190 (23). See also s. 187A as to mandated territories.

12. *Beyond the seas.* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s. 187), are treated as not being beyond the seas. As regards the Irish Free State, see note 10 above.

13. Paras. (34) and (35). See also the definitions in the Interpretation Act, 1889, s. 13 (6), and following. The Summary Procedure (Scotland) Act, 1864, was repealed and replaced by the Summary Jurisdiction (Scotland) Act, 1908.

## PART VI.

**[Part VI (ss. 191–193) and the Fifth Schedule are repealed.]**

**Section 96.**

**FIRST SCHEDULE.**

*Form of Oath to be taken by a Master whose Apprentice has absconded,  
and of Justice's Certificate annexed.*

I A.B., of do make oath, that I am by trade a  
and that was bound to serve as an  
apprentice to me in the said trade, by indenture dated the  
day of for the term of years; and that  
the said did on or about the day of  
abscond and quit my service without my consent;  
and that to the best of my knowledge and belief the said  
is aged about years. Witness my hand at  
the day of one thousand nine hundred  
and

(Signed) *A.B.*

I hereby certify that the foregoing affidavit was sworn before me at  
this                  day of  
one thousand nine hundred  
and

(Signed) C.D.,  
Justice of the Peace  
for



## PART II.

*Regulations as to Billets.*

(1) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route.

(2) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses.

(3) Except in case of necessity, where horses are billeted, each man and his horse shall be billeted on the same victualling house.

(4) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number.

(5) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards.

(6) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved.

(7) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment.

(8) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.

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*[Third Schedule repealed by A. & A. F. (A) Act, 1925.]*

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**FOURTH SCHEDULE.**

Section 154.

### FORM OF DESCRIPTIVE RETURN.

DESCRIPTIVE RETURN of \_\_\_\_\_ who<sup>o</sup> \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
the \_\_\_\_\_ day of \_\_\_\_\_, and was committed to confinement \_\_\_\_\_  
at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ as a deserter [or  
absentee without leave] from the \_\_\_\_\_ Bn. of the \_\_\_\_\_  
Regiment of \_\_\_\_\_

\* After the word "who," to be inserted either the words "was apprehended," or "surrendered himself," as the case may be.

<b>Age</b>	- - - - -	
<b>Height</b>	- - - - -	<b>Feet.</b> <b>Inches.</b>
<b>Complexion</b>	- - - - -	
<b>Hair</b>	- - - - -	
<b>Eyes</b>	- - - - -	
<b>Marks</b>	- - - - -	
<b>In uniform or plain clothes</b>	- - - - -	
<b>Probable date and place of attestation</b>	- - -	
<b>Probable date of desertion or beginning of absence, and from what place</b>	- - -	
<b>Name, occupation, and address of the person by whom or through whose means the deserter [or absentee without leave] was apprehended and secured.†</b>		
<b>Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given.</b>		

I do hereby certify, that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he:

the before-mentioned  
corps, and I recommended  
for a reward of \$.

\_\_\_\_\_ Signatures } of committing  
 \_\_\_\_\_ Residence } magistrate.  
 \_\_\_\_\_ Post Town }  
 \_\_\_\_\_ Signatures of prisoner.  
 \_\_\_\_\_ Signatures of informant.

Or, where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I hereby certify that the above named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence from a Secretary of State.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature.  
Residence.  
Post Town.

† It is important for the public service, and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting, or, under his direction, by his clerk.

Is it or is not a deserter or absconder without leave, from or belongs or does not belong to, as the case may be.

§ The justice will insert the name of the person to whom the reward is due, and the amount (6s., 10s., 15s., or 20s.) which, in his opinion, should be granted in this particular case.

*[Fifth Schedule repealed by 56 & 57 Vict. c. 54.]*

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## SIXTH SCHEDULE.

*Provisions as to determining amount to be paid for Articles requisitioned.*

1. Subject to the provisions of this schedule an application to a county court judge for a certificate shall be made in manner provided by rules of court, and shall be heard by the judge, without a jury, and his decision shall not be subject to appeal.

2. Subject to the provisions of this schedule, and to rules of court, the judge shall on such application act in accordance with the law regulating, and shall have the powers attaching to, the exercise of his ordinary jurisdiction.

3. In the case of impressment for hire, the amount fixed by the certificate shall be such amount as appears to the county court judge to be a fair rate of hire for the class of article in the district in which it is impressed or over which it is required to work. In the case of a requisition for purchase the amount fixed by the certificate shall be such amount as appears to the county court judge to be the fair market value of the article requisitioned on the day on which it was required to be furnished as between a willing buyer and a willing seller. Where the owner of a carriage or horse has been required to deliver it at a distance from his premises the amount shall include such sum as the judge may consider reasonable to cover the cost of such delivery.

4. No court fees shall be payable on the application, but the judge may, if he thinks fit, order either party to pay such sum as he may consider proper by way of costs to the other party, which sum shall be added to or deducted from the amount fixed by the county court judge as the value of the article requisitioned, and the amount to be included in the certificate shall be adjusted accordingly.

5. If the amount already paid by the Army Council exceeds the amount specified in the certificate, the county court judge shall certify the amount of the excess and shall order the amount so certified to be paid to the Army Council, which order shall be enforceable in like manner as a judgment of a county court.

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## RULES OF PROCEDURE, 1926.

(Including amendments published up to 31st December, 1928.)

[The Rules of Procedure, 1926, were issued as S.R.O. 989/1926, and the subsequent amendments as S.R.O. 558/1927 and S.R.O. 505/1928; these, however, do not contain the notes to the Rules which are shown herein, or the Specimen Charges (pp. 715-735), and Memoranda (pp. 763-770).]

### PART I.—ARREST AND TRIAL.

#### *Arrest.*

1. Report of delay of trial under Army Act, s. 45.

#### *Power of Commanding Officer.*

2. Duty of commanding officer as to investigation of charge for offence.
3. Hearing of charge.
4. Disposal of the charge or adjournment for taking down the summary of evidence.
5. Remand of accused.
6. Summary award of punishment by commanding officer.
7. Right of trial by court-martial in lieu of summary award.
8. Procedure on charge against officer.

#### *Disposal of Charge under Army Act, s. 47.*

9. Summary disposal of charge against officer or warrant officer.

#### *Revision of Summary Punishments.*

10. Revision of summary punishments.

#### *Framing Charges.*

11. Charge-sheet and charge.
12. Commencement and validity of charge-sheet.
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#### *Preparation for Defence by Accused Person.*

14. Rights of accused to prepare defence.
15. Information of charge and delivery of list of officers to accused.
16. Joint trial of several accused persons.

#### *Convening of Court-Martial.*

17. Procedure of officer on convening court-martial.
18. Adjournment for insufficient number of officers.
19. Ineligibility and disqualification of officers for court-martial.
20. Corps of members of court-martial.
21. Rank of members of court-martial in certain cases.

#### *Procedure at Trial.—Constitution of Court.*

22. Inquiry by court as to legal constitution.
23. Inquiry by court as to amenability of accused and validity of charge.

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24. Appearance of accused and prosecutor.
25. Proceedings for challenge of members of court.
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27. Swearing of judge-advocate and other persons.
28. Substitution of solemn declaration for oath.
29. Form of oath in case of trial of several accused persons.
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31. Arraignment of accused.
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34. Special plea to the jurisdiction.
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36. Plea in bar.
37. Procedure after plea of " Guilty."
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39. Plea of " Not Guilty," application for adjournment, and case for the prosecution.
40. Procedure where no witnesses to facts (except accused) called for defence.
41. Procedure where witnesses called for defence.
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43. Consideration of finding.
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53. Promulgation.
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*Insanity.*

57. Provisions as to finding of insanity and custody of insane person.

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58. Seating of members.
59. Responsibility of president.
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61. Procedure on trial of accused persons together.

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63. Sitting in closed court.
64. Time for trial.
65. Continuity of trial and adjournment of court.
66. Suspension of trial.
67. Proceeding on death or illness of accused.
68. Presence throughout of all members of court.
69. Taking of opinions of members of court.
70. Procedure on incidental question.
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82. Swearing of witnesses.
83. Mode of questioning witnesses.
84. Examination and cross-examination.
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*Defending Officer, Friend of Accused, and Counsel.*

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88. Counsel allowed in certain courts-martial.
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## RULES OF PROCEDURE, 1926

(Including amendments published up to 31st December, 1928).

### PART I.—ARREST AND TRIAL.

#### *Arrest.*

Report of  
delay of  
trial under  
Army Act,  
s. 45.

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under Section 45 of the Army Act, shall be made by means of a letter from the commanding officer of that officer or soldier reporting the necessity to the general or other officer to whom application would be made to convene a court-martial for the trial of that officer or soldier.<sup>1</sup>

1. See generally as to rr. 1-8, Ch. IV, and K.R., 533, *et seq.*  
This rule prescribes the manner in which the special report required by A.A. 45 is to be made. A similar report must be furnished weekly until the accused is released or a court-martial assembled; and on the receipt of every such report, the general or other officer to whom it is sent must satisfy himself as to the necessity for the continued retention of the accused in custody; K.R., 537(a). As to mode of reporting, see r. 135 (B). This special report is not required on active service.

#### *Power of Commanding Officer.*

Duty of  
commanding  
officer  
as to investi-  
gation of  
charge for  
offences.

2. Every commanding officer<sup>1</sup> will take care that a person<sup>2</sup> under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated,<sup>3</sup> unless investigation within that period seems to him to be impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported<sup>4</sup> by the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the person charged.

1. See r. 129 and note. A C.O. who unnecessarily detains a person in arrest or confinement, renders himself liable to a charge under A.A. 21 (1).

2. This rule applies to officers as well as soldiers.

3. See A.A. 45 (5). This rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sunday, Good Friday, and Christmas Day see r. 135 (A).

4. The report should be made by letter (see r. 135 (B)) and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness is available; K.R., 551.

Hearing of  
charge.

3.—(A) Every charge against a soldier will be heard<sup>1</sup> in the presence of the accused. The accused will have full liberty to cross-examine any witness against him, and to call any witnesses<sup>2</sup> and make any statement in his defence. On the application of the accused, he and his wife may be called as witnesses, subject to the provisions of Rule 80.<sup>3</sup>



(b) If the accused demands that the evidence against him be taken on oath, an oath will be administered by the investigating officer and taken by each witness in the same form and manner<sup>4</sup> as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration,<sup>5</sup> the like solemn declaration will be made before the investigating officer.

1. As to the mode of conducting the investigation see Ch. IV, paras. 19-29; K.R., 542-554. The Army Act and Rules do not require the investigation to be by the C.O. but make him responsible for the decision; A.A. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by r. 4 (C).

2. Police and other civilian witnesses cannot be compelled to attend before a C.O. but they can be compelled to attend at the taking of a summary of evidence (see A.A. 125 (3) and r. 4 (H)).

3. The last sentence of (A) was added after the passing of the Criminal Evidence Act, 1898. The accused had already the right under this rule to make a "statement," i.e., to give unsworn evidence. If (under (B)) he requires the witnesses "against" him to be sworn, any witnesses (including his wife) called by him should also be sworn; he himself may make an unsworn statement, or (either in addition to, or in lieu of, such a statement) may give evidence on oath. In the latter case r. 80 will apply to him.

4. See r. 82 and form on p. 763.

5. See A.A. 52 (4); r. 82 (C); and form on p. 763.

4.—(A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act<sup>1</sup> has been committed, or if, in his discretion, he thinks that the charge ought not to be proceeded with.<sup>2</sup>

Disposal of the charge or adjournment for taking down the summary of evidence.

(B) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either—

- (i) dispose of the case summarily<sup>3</sup>; or
- (ii) refer the case to the proper superior military authority<sup>4</sup>; or
- (iii) adjourn the case for the purpose of having the evidence reduced to writing.<sup>5</sup>

Provided that the commanding officer shall not dispose of a case summarily unless the accused is a soldier, or if the accused, being a soldier, has elected (under Section 46 of the Army Act) to be tried by a district court-martial.

(c)<sup>6</sup> Where the case is so adjourned, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing<sup>7</sup> in the presence of the accused before the commanding officer or such officer as he directs.

(d)<sup>8</sup> The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(e)<sup>9</sup> The evidence of each witness when taken down, as provided in (c) and (d), shall be read over to him, and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. After all the evidence against the accused has been given, the accused will be asked "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down

in writing, and may be given in evidence." Any statement or evidence of the accused will be taken down, but he will not be cross-examined upon it.<sup>8</sup>

If the accused is remanded for trial by court-martial, no evidence will be admitted at his trial of any statement which he may have made, or evidence which he may have given, at the taking of the summary of evidence before such caution was addressed to him.

(F)<sup>6</sup> If the commanding officer so directs, or if the accused so demands, the evidence of every such witness, whether for or against the accused, shall be taken on oath,<sup>9</sup> and the oath will be administered by the commanding officer, or by the officer before whom he directs the summary to be taken, in the same form and manner as provided for a court-martial,<sup>10</sup> or in the case of a witness allowed before a court-martial to make a solemn declaration,<sup>11</sup> the like declaration may be made.

(G)<sup>6</sup> If a person cannot be compelled to attend as a witness, or if owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing)<sup>12</sup> be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence: provided that, if such person can be compelled to attend, the accused may demand that he shall attend for cross-examination.

(H) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused.<sup>13</sup> The summons shall be in the form provided in the Second Appendix to these rules.

1. Every offence which a person subject to military law can commit is an offence under the Army Act, because it is either a military offence specified in the Act or a civil offence under s. 41.

In deciding whether a charge under A.A. 40 shall be proceeded with, the C.O. must consider whether the alleged offence is, or is not, to the prejudice of good order and military discipline; if, in his opinion, it is not, the charge must be dismissed. He must also consider whether, having regard to the limitations of time prescribed by A.A. 158 (1), and 161, the accused is liable to be proceeded against; see K.R., 548. As to the limitations of time in respect of certain civil offences see r. 36 (A) (iii) and note 4.

2. The C.O. must dismiss the charge if there is no evidence of any offence under the Army Act; he must also dismiss it if the accused has been previously acquitted or convicted of the alleged offence (see A.A. 46 (7), 47 (5), 157, and 162 (6)). He may dismiss it if he considers, for example, that the evidence is doubtful or the case trivial, or, in the exercise of his discretion, for any reason, e.g., the good character of the accused.

A C.O., unless further evidence is required or the case is one of difficulty, should never delay for more than one day in deciding as to the disposal of a case.

As to cases where sufficient evidence is not forthcoming at the investigation or a further offence is disclosed during the investigation, see K.R., 551, 553.

To make an entry against a man without punishment is a summary disposal and not a dismissal of the case.

3. This course will be adopted by the C.O. (subject in the case of N.C.Os. to K.R., 558, 559) unless (a) he thinks that the case ought to be tried by court-martial, or (b) the accused elects to be tried by district court-martial, or (c) the case is one which under K.R. 547 he is bound to refer to superior authority.

In certain circumstances the C.O. is bound to deal summarily with an offence of drunkenness unless the accused elects trial by district court-martial. (See A.A. 46 (3)).

4. This course will be adopted when the C.O. considers that the case should be disposed of summarily but he cannot, under K.R., 547, so dispose of it

without reference to superior authority. (See rr. 134 (A), 135 (B), and K.R., 616, 617.)

5. This course will be adopted in any case other than those mentioned in notes 3 and 4 above.

The final decision of the C.O. as to whether the case should be tried by court-martial will only be made after he has considered the evidence which has been reduced into writing, i.e., the summary of evidence. (See r. 5 (A) and note.)

6. For power to dispense with paras. (c), (d), (e), (f) and (g) see r. 104.

7. The adjourned hearing for the purpose of reducing the evidence to writing should, if possible, be held on the same day as the investigation. The C.O. may direct another officer to take down the summary of evidence, but an officer who has given material evidence at the investigation must not be appointed for the purpose.

The summary will be taken on oath if the C.O. so directs or if the accused so demands (see (F) and note 9 below).

The evidence (so far as it is relevant and admissible) of every witness at the investigation must be taken down unless the witness is absent on foreign service or some good reason renders it not reasonably practicable to call him. The evidence of witnesses who did not give evidence at the investigation may also be taken for either prosecution or defence, so long as it appears to be relevant. As provided in (d) the accused must be given full liberty to cross-examine the witnesses against him.

8. The formal caution provided for in this paragraph must be given as soon as the evidence for the prosecution is closed.

No statement or evidence by the accused can be admitted in evidence against him at his subsequent trial unless made or given after the formal caution.

If it is necessary to take an additional summary, the accused must again be formally cautioned before he makes any further statement or gives any further evidence.

The fact that the accused was duly cautioned should be recorded in the summary.

The accused may make a statement not upon oath or, if he wishes, give evidence on oath; he may call witnesses on his behalf (including his wife). The statement or evidence of the accused and the evidence of his witnesses must be taken down, all hearsay and irrelevant matter being excluded. The accused must not be cross-examined.

9. The C.O. cannot direct the evidence of the accused to be taken on oath. It rests entirely with the accused whether he will give sworn evidence or not and he may do so even if the witnesses against him are not sworn.

10. See r. 82 and form on p. 763.

11. See A.A. 52 (4); r. 82 (c); and form on p. 763.

12. The certificate can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

The accused has a right to demand the presence of the witness (unless he is not compellable) for purposes of cross-examination; but in many cases the provisions of this paragraph will effect a saving of time and expense; e.g., where a civilian witness is only required to give formal proof of a matter not really in dispute. Such witness must, however, be in attendance at the trial. As to calling at the trial of a witness whose evidence is not contained in the summary or abstract of evidence, see r. 76.

13. See A.A. 125 (3) and form of summons, p. 761. See also r. 78, note 5.

5.1—(A) The evidence and statement (if any) taken down in writing in pursuance of Rule 4 (in these rules referred to as the <sup>Remand of accused.</sup> summary of evidence) shall be considered by the commanding officer, who thereupon shall either—

- (i) remand the accused for trial by court-martial; or
- (ii) refer the case to the proper superior military authority; or
- (iii) if he thinks it desirable, and the accused is a soldier and has not himself elected to be tried by a district court-martial, rehear the case and dispose of it summarily.<sup>2</sup>

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay apply<sup>3</sup> to

the proper military authority to convene a court-martial. Any delay in the reference to superior military authority should not ordinarily exceed thirty-six hours.<sup>4</sup>

1. For power to dispense with this rule see r. 104..

2. The evidence in the summary may not correspond with that given upon the original investigation and the case may appear in a new aspect. The C.O. may, therefore, if he has jurisdiction to do so, and the accused has not elected (under A.A. 46 (8)) to be tried by district court-martial, decide to re-hear the case and, if he thinks fit, dispose of it summarily. He can dismiss the case on re-hearing it.

3. For form of application for court-martial, which must be signed by the officer in actual command of the unit to which the accused belongs, see p. 794.

See also memoranda for guidance of courts-martial, p. 763, *et seq.*

If the accused is on detached duty, the C.O. detachment is for this purpose the O.C. unit, unless his powers are restricted under K.R., 563 (c).

4. As to exclusion of Sunday, &c., in reckoning time, see r. 135 (A).

Summary  
award of  
punishment  
by com-  
manding  
officer.

6.—(A) The term of detention when awarded by a commanding officer in days shall begin on the day of the award. The term of detention when awarded by a commanding officer in hours shall begin at the hour when the soldier sentenced is received at the detention barrack or branch detention barrack to which he is committed, or if he has not been sooner received into the detention barrack or branch detention barrack, shall begin on the day after the day of the award at the hour fixed for the commitment and release of soldiers under sentence.<sup>1</sup>

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence.<sup>2</sup>

<sup>1</sup>. C.Os. must bear in mind the regulations as to summary award of punishments; K.R. 558-568; and as to drunkenness; K.R., 574-580. See also Ch. IV, paras. 31-38.

A C.O. will award his sentence, up to seven days, in hours, but if exceeding seven days, in days; K.R., 561(b)(ii). In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a soldier under sentence is committed, his term of detention will be reckoned to begin on the first minute of the day of the award. But when the sentence is awarded in hours, the detention by virtue of this rule will not commence until the hour at which the soldier is received into the detention or branch detention barrack, or if he is not received into such barrack on the day following the date of the award, then it will commence at the hour fixed for the commitment of soldiers under sentence on the day after the day of the award. This rule will, therefore, allow a C.O. where there is no accommodation in the detention barrack, to postpone the commitment of the soldier for one day, and to keep him in the guard detention room without his term of detention beginning to run, till the usual hour of commitment on the next day after the detention is awarded, whether Sunday or not (see r. 135 (A)). If, however, he is kept longer in the guard detention room and is ultimately committed to a detention barrack, his term of detention will begin so to run, and if not committed to a detention barrack at all, the detention begins to run from the usual hour of commitment on the day of the award. It must be recollected that a soldier's pay cannot be stopped after his having been awarded detention for any day on which he is in custody, before his detention begins to run under this rule.

2. The award is considered final when the accused has been removed from the presence of the C.O. The C.O. can at any time diminish the punishment before its completion, though he cannot add to it.

As to entry of C.O.'s award see K.R., 544, 545, 1630-1. As to revision of summary punishments see r. 10.

7.—(A) If a soldier is dealt with summarily by his commanding officer and the award or finding involves a forfeiture of pay, or (though such forfeiture is not involved) the award is not an award of a minor punishment,<sup>1</sup> and his commanding officer has omitted to ask him whether he desires to be dealt with summarily or to be tried by a district court-martial,<sup>2</sup> the soldier may, at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence, claim his right to be tried by a district court-martial.<sup>3</sup>

Right of trial by court-martial in lieu of summary award.

(B) Except as mentioned in sub-section (8) of Section 46 of the Army Act and in this rule, a soldier has no right to claim a trial by court-martial.

1. See K.R., 558 (b), 560 (b).

2. A C.O. should never omit to ask this question which he is directed to put by A.A. 46 (8); but this paragraph provides for a possible omission to do so.

3. See Ch. V, para. 79, and K.R. 652 (c) as to punishment in such a case.

8.<sup>1</sup>—(A) Where an officer is charged with an offence under the Army Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 4 in the case of a soldier.<sup>2</sup>

Procedure on charge against officer.

(B) When an officer is ordered to be tried by court-martial, without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him, *gratis*, as provided in Rule 14 (B).<sup>3</sup>

1. For power to dispense with observance of this rule owing to military exigencies, &c., see r. 104.

2. In the case of an officer, as in that of a soldier, the charge must come before his C.O. in order that he may determine whether the charge shall be dismissed, or the case referred to superior military authority for summary disposal under A.A. 47 or trial by court-martial. By this provision the C.O. can dispense with a formal and detailed investigation unless the accused officer demands one. It does not preclude the C.O. from calling the officer before him and investigating the case as he may deem necessary. The officer can only demand formal investigation of his case by the C.O.; he has no right under this rule to demand a court of inquiry.

3. The convening officer will be responsible for the furnishing of this abstract which should not be too much in detail. It should always be delivered to the accused even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings. (See r. 124 (M).)

#### *Disposal of charge under Army Act, Section 47.*

9.—(A) Where an officer or warrant officer is remanded for the disposal of a charge against him by an authority empowered under Section 47 of the Army Act to deal summarily with that charge, the summary of evidence or (in the case of an officer where there is no summary of evidence) an abstract of the evidence to be adduced shall be delivered to him, *gratis*, with a copy of the charge as soon as practicable after its preparation, and in any case not less than twenty-four hours before his trial.<sup>1</sup>

Summary disposal of charge against officer or warrant officer.

(B) Where the authority empowered under Section 47 of the Army Act decides to deal summarily with a charge against an officer or warrant officer, he shall, unless he dismisses the charge or unless the accused has consented<sup>2</sup> in writing to dispense with

the attendance of the witnesses, hear the evidence in presence of the accused. The accused will have full liberty to cross-examine any witness against him and to call any witnesses and make a statement in his defence. The accused may give evidence himself and his wife may be called as a witness subject to the provisions of Rule 80.

(c) If the accused gives evidence himself or demands that the evidence against him be taken on oath, the provisions of Rule 82 shall apply save that the oath shall be administered by the authority dealing summarily with the case.

1. As to entries of awards in the regimental conduct sheets of officers and warrant officers, see K.R., 1629.

2. A certified true copy of the written consent of the officer should be attached to each copy of the regimental conduct sheet forwarded to the War Office. (K.R., 1629 (b)).

### *Revision of Summary Punishments.*

Revision of  
summary  
punish-  
ments.

10. If any punishment awarded by a commanding officer, or by an authority dealing summarily with a charge under Section 47 of the Army Act, appears to the Army Council, or to a superior officer as hereinafter defined, to be wholly illegal, the Army Council or such superior officer shall direct that the award be cancelled and the entry in the records of the accused be expunged.

If such punishment appears to the Army Council, or to a superior officer as hereinafter defined, to be in excess of the punishment authorized by law for the offence, the Army Council or such superior officer may vary the punishment awarded so that it shall not be in excess of the punishment authorized by law, and the entry in the records of the accused shall be varied accordingly.

If such punishment appears to the Army Council, or to a superior officer as hereinafter defined, to be too severe having regard to all the circumstances of the case, the Army Council or such superior officer may remit the whole or a part of the punishment awarded, and such remission shall be entered in the records of the accused; provided that such power of remission shall be exercised by a superior officer within a period of two years only from the date of the award.<sup>1</sup>

In this rule the expression "superior officer" means, with respect to punishments awarded by a commanding officer, an officer not below the rank of brigadier who is also of superior rank to the commanding officer who awarded the punishment, and with respect to punishments awarded by an authority dealing summarily with a charge under Section 47 of the Army Act, in India the Commander-in-Chief of the Forces in India, and on active service the general or air officer commanding-in-chief in the field if of superior rank or superior relative rank to the officer who awarded the punishment.

1. Any cancellation, variation or remission by a superior officer of a punishment inflicted upon an officer under A.A. 47 will be notified to the War Office. See K.R., 1629 (b).

### *Framing Charges.*

Charge-  
sheet and  
charge.

11.—(A) A charge-sheet<sup>1</sup> contains the whole issue or issues to be tried by a court-martial at one time.

(b) A charge<sup>2</sup> means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(c) A charge-sheet may contain one charge or several charges.<sup>3</sup>

1. The charge-sheet is usually prepared by the adjutant of the accused's unit; but r. 17 makes the convening officer responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs; if trial is ordered, the order must be added at the foot and signed by—or by a staff officer "for"—the convening officer.

For submission of certain charges to the Judge-Advocate-General, see K.R., 630.

There may be several charge-sheets—see r. 62; but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered. For illustration of charge-sheet, see p. 714.

2. The "charge" here referred to is the formal written charge upon which the accused is to be tried, as distinct from the charge or complaint (mentioned in A.A. 46 (1) and rr. 3, 4 and 8) which gave rise to the preliminary investigation.

3. All charges (including alternative charges) must be consecutively numbered. As to insertion of charges in separate charge-sheets, see r. 62 and notes.

12.—(A) Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, and name, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law<sup>1</sup> in respect of the offence charged. Commence-  
ment and  
validity of  
charge-sheet.

(B) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged,<sup>2</sup> if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(c) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein.<sup>3</sup>

1. See illustration of charge-sheet, p. 714. As an officer or soldier of the regular forces is always subject to military law, a statement in the charge-sheet that the accused belongs to a battalion of the regular forces will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, that he is subject to military law, without expressly adding the words. But if the accused belongs to the reserves or to the Territorial Army, or to the Royal Air Force lent or attached to the Army, the charge-sheet must state, and the court must, either by evidence or from their military knowledge, be satisfied, that he was at the time of the offence subject to military law. (See, however, Reserve Forces Act, 1882, ss. 6 and 15.)

If the accused is a civilian, or if his name and position are unknown, as may happen on active service, the charge-sheet must expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must be given of the fact that he was, for example, a sutler, or a holder of a pass from the officer in command. See specimen charge-sheet No. 14, p. 717.

For persons subject to military law, see A.A. 175, 176.

2. For powers of the court to amend such a mistake, see r. 33 (A).

An accused person may be described by an assumed name if he is commonly known by that name.

3. This paragraph must not be regarded as excusing any carelessness in preparing charge-sheets. It enables a court to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

Contents  
of charge.

13.—(A) Each charge<sup>1</sup> should state one offence only,<sup>2</sup> and in no case should an offence be described in the alternative<sup>3</sup> in the same charge.

(B) Each charge should be divided into two parts—

- (i) The statement of the *offence*; and,
- (ii) The statement of the *particulars* of the act, neglect, or omission constituting the offence.<sup>4</sup>

(C) The offence should be stated, if not a civil offence, in the words of the Army Act,<sup>5</sup> and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.<sup>6</sup>

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect, or omission which it is intended to be proved against him as constituting the offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.<sup>7</sup>

(F) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.<sup>8</sup>

1. For forms of charges and preliminary note as to their use, see p. 699 *et seq.* See also memoranda for guidance of courts-martial, p. 763 *et seq.*

2. *E.g.*, a single charge under A.A. 8 (2) of using threatening and insubordinate language to his superior officer would be a bad charge as it discloses two separate offences; similarly a single charge under A.A. 18 (4) or 41 of stealing and receiving would be a bad charge. An accused, however, may legally be charged under A.A. 41 with burglary and larceny or housebreaking and larceny, as under the Larceny Act, 1916, burglary and larceny is made a single offence, as is also housebreaking and larceny.

3. *E.g.*, a single charge under A.A. 8 (2) of striking or offering violence to his superior officer would be a bad charge, as it discloses two separate offences. But the use of the word "or" in a charge, *i.e.*, in the statement of the offence, is permissible where the charge discloses only one offence; *e.g.*, a charge under A.A. 15 of "when in garrison being found beyond the limits fixed by general orders without a pass or written leave from his commanding officer" would be a good charge, because the accused is not charged with one of two offences, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge the words "beyond the limits fixed by general or garrison orders" were used, the charge would be a bad charge because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders.

A single transaction, although technically disclosing more than one offence, should not, as a rule, be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent. On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape from arrest and absence without leave (following such escape).

Larceny of goods the property of several different owners should not be included in one charge.

4. The statement of the particulars must support the statement of the offence. If the statement of an offence laid under A.A. 8 (2) alleged that the accused struck his superior officer, particulars stating that the accused offered violence to the said superior officer would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter.



In all cases involving an intent to defraud, such intent must be stated in the particulars.

5. Under r. 134 (B) this will include the words of any other Act creating the offence, such as the Acts relating to the reserve or auxiliary forces. See notes as to use of forms of charges (25) p. 702.

6. But the essence of the offence charged under A.A. 41 must be expressed; e.g., a charge of damaging property must contain the averment that the act was done "maliciously."

7. See, e.g., specimen charge-sheet No. 68, p. 727. If in such a case there were an acquittal upon the first charge and a conviction upon the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

8. Unless these facts are stated in the particulars and proved in evidence, the court cannot award the punishment of stoppages under A.A. 44 (gg) and (n).

As to evidence of value, see note 16 to A.A. 138 (4).

As to deductions from ordinary pay, see A.A. 137, 138.

*Preparation for Defence by Accused Person.*

14.<sup>1</sup>—(A) An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses,<sup>2</sup> and with any friend, defending officer or legal adviser<sup>3</sup> with whom he may wish to consult. Rights of accused to prepare defence.

(B) As soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than twenty-four hours before his trial, an officer<sup>4</sup> shall give to him *gratis* a copy of the summary of evidence or (in the case of an officer where there is no summary of evidence) an abstract of the evidence, and explain to him his rights under these rules as to preparing his defence<sup>5</sup> and being assisted or represented at the trial,<sup>6</sup> and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available.<sup>7</sup> The convening officer shall be informed whether or not the accused so elects. If any other or additional summary or abstract of evidence be taken subsequently, a copy thereof shall be given *gratis* to the accused as soon as may be.

1. For power to dispense with this rule, see r. 104.

2. The freest communication which is consistent with the necessities of discipline and the safe custody of the accused should be permitted; otherwise the subsequent proceedings may be invalidated. See r. 39 (A).

The accused is not bound to call as a witness at his trial any or every person with whom he communicates as a possible witness on his behalf.

3. As to defending officer and friend of accused, see r. 87; and as to counsel, see rr. 88–93. As to the right of the accused to consult the judge-advocate on any question of law or procedure, see r. 103 (a).

4. This duty must be properly performed by a responsible officer.

5. See rr. 14 (A), 15, 16.

6. See r. 87, *et seq.*

7. See r. 87 (B).

15.<sup>1</sup>—(A) The accused, before he is arraigned,<sup>2</sup> shall be informed by an officer<sup>3</sup> of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly<sup>4</sup>; the interval between his being so informed and his arraignment should not be less than twenty-four hours. Information of charge and delivery of list of officers to accused.

(B) The officer,<sup>5</sup> at the time of so informing the accused, shall give the accused a copy of the charge-sheet, and where the accused

is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.<sup>5</sup>

(c) A list of the ranks, names, and corps (if any) of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the accused if he desires it<sup>6</sup>.

1. For power to dispense with this rule, see r. 104.

2. As to arraignment, see Ch. V, para. 42; r. 31 and notes.

3. This duty will usually devolve upon the prosecutor, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under r. 104, the accused must have information of the charge and opportunity of calling his witnesses.

4. The duty of procuring the attendance of witnesses who are subject to military law devolves, under r. 78 (A) upon the C.O. or convening officer or, after the assembly of the court, the president. If witnesses required by the accused are not subject to military law, the C.O. should at once communicate with the convening officer or, after the assembly of the court with the president or judge-advocate (if any;) (see r. 78 (B)).

For form of summons to witnesses, see p. 761.

The request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and the reasons for it should be communicated to the court, who will deal with the matter under r. 39 (A) or 79.

The court should always adjourn if an essential witness is absent. (See r. 79).

5. Even if the observance of this rule is dispensed with under r. 104, the charges must be clearly explained to the accused.

6. If there is any reason to suppose that the accused may reasonably object to any member, the list should be delivered, even if not demanded.

Joint trial  
of several  
accused  
persons.

16. Any number of accused persons may be charged jointly and tried together for an offence alleged to have been committed by them collectively,<sup>1</sup> but in such a case notice of the intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge,<sup>2</sup> and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence<sup>3</sup>; the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it,<sup>4</sup> shall allow the claim, and the person making the claim shall be tried separately.

1. If two accused persons are charged separately with committing the same offence they cannot, even at their own request, be tried together because they have not been charged jointly.

As to swearing the court to try several accused persons, see r. 71 and note, and as to form of proceedings in the case of a joint trial, see para. 22 of memoranda on p. 769.

2. Each of the accused should also be told that, if he gives evidence himself, and, in doing so, incriminates any other person charged jointly with him, he is liable to be cross-examined as to character (see r. 80 (n) (iii)). But this liability will not, of itself, entitle the accused to be tried separately.

3. It must be remembered that though each of the accused is a competent witness, none of the other persons charged jointly with him can compel him to give evidence. See Ch. VI, para. 85.

4. In the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of separate trial. In cases of doubt, the accused should be tried separately.

*Convening of Court-Martial.*

17.—(A) An officer before convening a court-martial<sup>1</sup> should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the accused, or refer the case to superior authority.<sup>2</sup>

Procedure of officer on convening court-martial.

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.<sup>3</sup>

(C) If more than fifteen days in the British Islands, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial, or to deal summarily with a case, receives an application for a court-martial or to deal summarily with a case, and the time when the case is disposed of, either by the assembly of a general or district court-martial or otherwise, the officer shall report the case and the reasons for the delay, if in the British Islands to the General Officer Commanding-in-Chief the Command or the General Officer Commanding the district, and if in a colony to the General or other officer in chief command of the colony, and if in a foreign country to the General or other officer in chief command of the force. But if the officer receiving the application be the General Officer Commanding-in-Chief the command, or the General Officer Commanding the district, or the General or other officer in chief command of the colony or force, the report shall be made to the Army Council. In India the report shall, in all cases, be made to the Commander-in-Chief of the Forces in India.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court,<sup>4</sup> and may also appoint or detail such waiting officers<sup>5</sup> as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the accused is to be tried, and the summary or abstract of evidence.<sup>6</sup>

1. With respect to the duties of the convening officer, see further Ch. V, paras. 20-23, and K.R., 615-644. See also form of application for a court-martial (p. 794).

Except on board ship and in such special cases as may be determined by the Army Council, the C.O. of an accused person or an officer who has investigated the charge or remanded the accused for trial cannot afterwards act as convening officer in the same case, but must refer it to a superior authority. (K.R., 617 (b).)

2. In the United Kingdom, in the case of a general court-martial and in all cases of fraud and indecency, the proposed charge-sheet and summary of evidence will be submitted by the convening officer to the Judge-Advocate-General before the court is convened. This does not apply to simple cases of theft. (K.R. 630.)

For the convening officer's duties in relation to the appointment of a judge-advocate, see r. 101 (A) and notes.

3. See K.R., 634.

4. The convening officer must be careful to insert in the convening order the required expression of his "opinion" when he finds it impossible to comply with—

(a) A.A. 48 (9), as to rank of the president; or

(b) A.A. 48 (10), as to composition of the court; or

(c) r. 20 (A), as to appointment of members from different units; or

(d) r. 20 (a), as to appointment of members belonging to the auxiliary forces; or

(e) r. 21 (a), as to the rank of members (see also K.R. 642).

The declaration as to military exigencies, &c., dispensing with certain rules (see r. 104) should be in a separate order. For form of declaration, see p. 741.

See generally as to general or district courts-martial, the number of members, their qualification and rank and the rank of the president, A.A. 48, 50, 182 (4); rr. 19-21; K.R., 642, 643.

If a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed (K.R., 642 (a)).

Under A.A. 53 a court-martial which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed in doubtful or complicated cases. (See K.R., 643.)

Where several persons are to be tried separately before the same court, a separate copy of the convening order should be prepared for each case.

5. As to detailing of waiting members to meet reduction by challenge or absence, see K.R., 643, r. 25 (c) and note.

6. The convening order should also be sent.

The object of this paragraph is to enable the president to have a general knowledge of the case which is to come before the court. If any amendment in the charges appears to him to be required, he should communicate with the convening officer before the trial begins.

The summary of evidence must be read at the trial when the accused pleads guilty (r. 37 (b)). It may be used at the trial for the purpose of showing that a witness has on a prior occasion made a particular statement or is giving evidence which differs from that given by him when the summary of evidence was taken. Any statement by the accused contained in the summary may be read to the court as evidence at the close of the prosecutor's case upon formal proof that it was made voluntarily after due caution (see r. 4 (x) and notes). Except in the above instances the summary cannot be used as evidence.

During the trial the president should carefully compare the oral evidence given by a witness with that given by him at the summary of evidence and, if any material variations occur, should question him thereon.

Great care must be taken by the members of the court not to be biased by the statements appearing in the summary of evidence, except so far as they affect the credibility of any witness by showing that he has contradicted his previous evidence; indeed it is usually expedient that the president alone should refer to the summary.

Where the accused pleads guilty, the summary of evidence must be annexed to the proceedings (r. 37 (a) and form of proceedings, p. 746). Where the accused pleads not guilty, the summary should be forwarded with the proceedings, but should only be annexed thereto if it or any part of it has actually been used in evidence in the circumstances shown above.

For abstract of evidence, see r. 8 (b).

Adjournment for insufficient number of officers.

18.—(A) If before the accused is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, and if there are not sufficient officers in waiting to take the place of those unable to serve, the court should ordinarily adjourn for the purpose of fresh members being appointed<sup>1</sup>; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum,<sup>2</sup> proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of a new president,<sup>3</sup> or of fresh members,<sup>4</sup> whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

1. A general court-martial for which, say, seven members have been detailed, will not ordinarily begin the trial with less than seven. It may

be assumed that the convening officer, in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case, of submitting the issues to be decided to the arbitration of a larger tribunal. But the court *may* proceed under this rule if not reduced below the legal minimum. (See notes to r. 17.)

No court can be formed if the number of officers is, from whatever cause, below the legal minimum or the president is absent (r. 65 (b)), nor can the proceedings, even if properly commenced, be continued. In either case the president or, if he is absent, the senior officer present must report the circumstances to the convening officer.

2. See A.A. 48 (3), (4), (5).

3. This will apply if the president is found to be ineligible or disqualified (rr. 19-22), or is not of the required rank (r. 22 (A) (iv)), or if an objection to him is allowed (A.A. 51 (3) and r. 25), or if he cannot attend (A.A. 53 (2)).

4. After the trial has once begun fresh members cannot, in any circumstances, be appointed. (A.A. 53 (1)).

**19.—(A) An officer is not eligible<sup>1</sup> for serving on a court-martial if he is not subject to military law or otherwise qualified to serve under the provisions of the Army Act.**

**(B) An officer is disqualified<sup>2</sup> for serving on a court-martial if he—**

*Ineligibility and disqualification of officers for court-martial.*

- (i) Is the officer who convened the court; or
- (ii) Is the prosecutor or a witness for the prosecution; or
- (iii) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the company, &c., commander who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or
- (iv) Is the commanding officer of the accused, or of the corps or battalion to which the accused belongs; or
- (v) Has a personal interest<sup>3</sup> in the case.

**(c) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say:—**

- (i) If it is a district court-martial, two whole years;
- (ii) If it is a general court-martial, three whole years.<sup>4</sup>

1. "Eligible" is used with reference to an officer being subject to military law or "otherwise qualified" (i.e., under A.A. 48 (10)) and of the necessary standing; that is to say, it refers to the status of the officer, and involves no personal considerations.

2. "Disqualified" is used with reference to personal disqualification on the part of an officer.

It will be observed that A.A. 50 (2) (3) contains most of the disqualifications contained in this paragraph. Except so far as is provided by r. 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial; (A.A. 50 (1)).

3. This will extend to even a remote or very small interest; e.g., where a soldier is charged with stealing a silver fork belonging to a regimental mess, an officer of that mess has a personal interest and is disqualified from serving. A merely technical interest has been held to disqualify a person from holding a judicial position; e.g., a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share or interest himself, has, nevertheless, a personal interest in any charge relating to that money.

4. Paragraph (C) is taken from A.A. 48 (3), (4). In addition, an officer is not to be detailed to sit on a court-martial unless and until his C.O. deems him, after repeated attendances at courts-martial for instructional purposes, competent to perform so important a duty. (K.R., 638.)

Corps of  
members of  
court-  
martial.

20.—(A) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and also, if he belongs to the same regiment of cavalry, or the same brigade of artillery, or battalion of infantry as the accused, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.<sup>1</sup>

(B) In the case of a court-martial for the trial of an accused person belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to that branch of the auxiliary forces to which the accused belongs.<sup>2</sup>

1. The general rule as to courts-martial is that—

(1) they should not be composed exclusively of officers of the same corps; and

(2) they must not be composed exclusively of officers belonging to the same regiment of cavalry, brigade of artillery or battalion of infantry.

This general rule is however subject to the exceptions mentioned in this paragraph and care must be taken by the convening officer that the expression of his "opinion" is duly inserted in the convening order when required.

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, the following procedure should be adopted:—the convening officer should apply to the command concerned asking for the names of officers to compose the court, and these should be inserted in the convening order (A.F. A.47). The command which furnishes the officers should then insert in the command orders an order to the effect that "the undermentioned officers have been placed at the disposal of the Commander, . . . Brigade (or as the case may be) for duty at a court-martial to assemble at . . . on . . ." The command order need not be attached to the proceedings of the court-martial.

2. Although there is no express provision as to the Militia (Supplementary Reserve), if the accused belongs thereto one member of the court should, if practicable, be an officer belonging to the Supplementary Reserve of Officers and serving with the Supplementary Reserve. If the accused belongs to the Territorial Army, then by this rule one member of the court must, if practicable, belong to that force.

The convening officer must be careful to see that the expression of his "opinion" is inserted in the convening order where required by this paragraph.

An officer of the regular forces who is an adjutant of a unit of the Supplementary Reserve or Territorial Army is not considered for the above purposes to be an officer of the Supplementary Reserve of Officers or Territorial Army, as the case may be.

Rank of  
members  
of court-  
martial  
in certain  
cases.

21.—(A) In the case of a general court-martial, four at least of the members must not be below the rank of captain.<sup>1</sup>

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.<sup>2</sup>

1. This is, in effect, a statutory requirement. (See A.A. 48 (3)).

When a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the C.O. of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused (K.R. 642).

2. The first portion of para. (B) does not reproduce any statutory provision. As to the second portion, see A.A. 48 (7).

For the trial of a subaltern officer, two members of his own rank (if r. 21 (A) permits so many) will suffice.

The convening officer must be careful to see that the expression of his "opinion" is inserted in the convening order where required by this rule.

### *Procedure at Trial—Constitution of Court.*

22.—(A) On the court assembling,<sup>1</sup> the order convening the court shall be laid before them together with the charge-sheet and the summary or abstract of evidence or a true copy thereof,<sup>2</sup> and also the ranks, names, and corps of the officers appointed to serve on the court<sup>3</sup>; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted<sup>4</sup>; that is to say—

*Inquiry by court as to legal constitution.*

- (i) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these rules<sup>5</sup>;
- (ii) That the court consists of a number of officers not less than the legal minimum,<sup>6</sup> and, save as mentioned in Rule 18, not less than the number detailed;
- (iii) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial<sup>7</sup>;
- (iv) That the president is of the required rank and duly appointed;<sup>8</sup> and
- (v) In the case of a general court-martial, that the officers are of the required rank.<sup>9</sup>

(B) The court should further, if a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.<sup>10</sup>

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. The inquiries necessitated by this and the following rule should be conducted in private. The court is not "open" at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and summary or abstract of evidence will be in the possession of the president. (See r. 17 (x)).

3. Where members are detailed by rank and corps and not by name, then only officers of the actual rank and corps stated in the convening order can serve as members.

4. It is essential that the court should ascertain, as far as lies in their power, that they have jurisdiction. For form of convening order, see p. 736. In the case of a general or district court-martial, the order must be signed by the convening officer or "for" him by a staff officer or by a staff officer as such. (See r. 107 as to convening order in the case of a field general court-martial). The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed upon the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

5. *I.e.*, in accordance with A.A. 48, 50, 122-3, 179 (Royal Marines), 180 (Indian forces), 182 (warrant officers), 184 (persons not belonging to H.M. forces), and rr. 17-21.

The court can only look at the convening order; they cannot enquire whether the convening officer holds a warrant to convene. But they must have regard

to rr. 20 and 21, and should see that the order states all that it is required to state; *e.g.*, the expression of the convening officer's "opinion" where necessary (see note 4 to r. 17).

6. See A.A. 48 and notes. In counting the number of officers, the president is included.

7. For eligibility and disqualification see A.A. 50 (2) (3); r. 19 and notes; see also Ch. V, paras. 16-19, and 31.

When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the president must insert and sign the certificate shown in the note on p. 742.

8. For rank of president see A.A. 48 (9) and 182 (4). The president must be named in the convening order (K.R. 644 (a)). If the president of a general or district court-martial is not a field officer, care must be taken to see that the opinion of the convening officer as to non-availability (see A.A. 48 (9)) is duly expressed in the convening order.

9. See A.A. 48 (3) (7), and r. 21 and note. See also K.R. 642-4.

10. As to appointment and disqualification of judge-advocate see r. 101 and notes. In the United Kingdom a judge-advocate is appointed by the Judge-Advocate-General, and the court should ascertain that he has been so appointed. Out of the United Kingdom a judge-advocate is appointed by the convening officer, and the court must assume that the convening officer is authorised by warrant to make the appointment.

(Form of proceedings, pp. 741-2.)

**Inquiry by court as to amenability of accused and validity of charge.**

**23.—(A)** The court, when satisfied on the above matters,<sup>1</sup> should satisfy themselves in respect of each charge about to be brought before them,—

- (i) That it appears to be laid against a person amenable to military law,<sup>2</sup> and to the jurisdiction of the court<sup>3</sup>; and
- (ii) That each charge discloses an offence under the Army Act,<sup>4</sup> and is framed in accordance with these rules,<sup>5</sup> and is so explicit as to enable the accused readily to understand what he has to answer.<sup>6</sup>

**(B)** The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. The inquiry by the court under this and the preceding rule should be in closed court.

2. See A.A. 158, 175, 176 and 184, and introductory observations to A.A. Part V, pp. 577-9.

3. The following are examples of cases where a court-martial would have no jurisdiction:—

- (a) Trial of an officer by district court-martial (A.A. 48 (8)).
- (b) Trial of a warrant officer with a subaltern as president (A.A. 182 (4)).
- (c) Trial of a field officer with a subaltern as a member of the court (A.A. 48 (7)).

Amenability may depend upon the question whether the person to be tried, although not in fact an officer or soldier, is subject to military law as an officer (A.A. 175 (7), (8)) or as a soldier (A.A. 176 (9), (10)).

When the person to be tried is an officer or man of the Royal Marines, the court may presume that he is amenable to the jurisdiction (see A.A. 179 (1)), unless a special plea to the jurisdiction under r. 34 (A) is raised.

Questions of amenability may also arise with reference to natives of India (see A.A. 175 (7), 176 (10), and 180 (2) (a)).

4. See r. 13 (c).

5. See rr. 11-13.

6. See also r. 15 (B).

(Form of proceedings, p. 742.)



*Procedure at Trial—Challenge and Swearing.*

**24.** When the court have satisfied themselves as to the above facts, they shall cause the accused to be brought before the court, and the prosecutor,<sup>1</sup> who must be a person subject to military law, will take his place. Appearances of accused and prosecutor.

1. The selection of the prosecutor is subject to the approval of the convening officer. The convening officer must not appoint himself as prosecutor, and the prosecutor must not confirm the finding and sentence of the court.

A prosecutor with experience and knowledge of military law should be selected, particularly in cases of difficulty or complexity, and he should, as far as possible, be relieved from ordinary military duties, so that he may be enabled fully to master the case.

In cases where the production of documents only is necessary, a N.C.O. might be permitted to act as prosecutor.

As to the duties of the prosecutor see rr. 39–41, 60 and notes thereto; see also Ch. V, para. 52; K.R. 645.

As to the employment of counsel on behalf of the prosecutor see rr. 89–90, K.R. 640–1.

(Form of proceedings, p. 742.)

**25.**<sup>1</sup>—(A) The order convening the court shall be read in the hearing of the accused and the court shall ascertain that it is constituted of officers to whom the accused makes no reasonable objection.<sup>2</sup> Proceedings for challenge of members of court.

(B) The accused has no right to object to the prosecutor or judge-advocate.

(C) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The accused may call any person to make a statement<sup>3</sup> in support of his objection. Such person may be questioned by the accused and by the court.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer. On an objection to an officer, all the other<sup>4</sup> officers present<sup>5</sup> shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, or is not available to serve owing to any cause which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the president shall appoint one of such officers to fill the vacancy.<sup>6</sup> If there is no officer in waiting available, the court will proceed as directed by Rule 18.<sup>7</sup>

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court.<sup>8</sup>

1. This rule must be read in conjunction with A.A. 51.

2. The accused must make each objection separately; he cannot object to the court collectively except upon a plea to the jurisdiction under r. 34. If he persists in objecting to the court collectively, the objection should be dealt with as if made to all the members individually and the procedure provided by this rule strictly followed. In practice an objection to a member may be

equivalent to a plea to the jurisdiction. In such a case it should be dealt with under this rule although it might more properly have been raised under r. 34.

An officer objected to on the ground of prejudice or for having formed or expressed an opinion upon the case should always be permitted to retire unless the objection is obviously groundless. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member (see r. 19 (b) (v) and notes).

The court may be closed to consider each objection.

For form to be followed upon an objection, see Variation, pp. 742-3.

As to objections to the president see A.A. 51 (3), (4).

3. Witnesses to an objection under this rule cannot be examined on oath.

4. This excludes an officer from voting on his own case.

5. *I.e.*, members who have not retired by reason of objections to them having been allowed.

6. *I.e.*, a vacancy created either by a successful objection or through non-attendance of a member detailed.

The president should ordinarily appoint a waiting officer of corresponding rank to that held by the retiring or absent officer.

7. If the court are reduced below the legal minimum, they must adjourn; even if not so reduced, they should ordinarily adjourn unless they consider that, in the interests of justice or for the good of the service, it is inexpedient to do so.

The president can only appoint to a vacancy an officer who has been detailed as a waiting officer.

8. It is desirable to ascertain before the accused is brought before the court whether a waiting member is eligible and qualified to serve if called upon.

An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote upon such objections.

In a doubtful case an objection should always be allowed. It is very important that the court should not only be impartial but be believed by the accused and his comrades to be so.

(Form of proceedings, pp. 742-3.)

#### Swearing of members.

26.—(A) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, an oath shall be administered to and taken in presence of the accused by each member of the court in the form and manner provided in the Second Appendix to these rules.<sup>1</sup>

(B) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court; if there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.<sup>2</sup>

1. See pp. 762-3.

It is not necessary to kiss the Book. The oath must be administered and taken with distinctness and solemnity.

As to swearing the court to try several persons, see rr. 29 and 71 (A).

For solemn declaration in lieu of oath, see A.A. 52 (4), r. 28 and notes.

For taking of oath in Scottish or other fashion, see r. 30.

2. This provision prescribes, in accordance with A.A. 52 (1), the persons who are to administer the oath to the president and other members of the court.

The president must be sworn separately; the other members may be sworn collectively.

(Form of proceedings, p. 744.)

**27.** After the members of the court are all sworn, an oath shall be taken in the presence of the accused by the judge-advocate, by an officer attending for the purpose of instruction, by a shorthand writer and by an interpreter or by such of them as are attendant upon a court-martial, in the form and manner provided in the Second Appendix to these rules. The oath shall be administered by the president or by some member of the court or, except in the case of the judge-advocate, by the judge-advocate (if any).<sup>1</sup>

Swearing of judge-advocate and other persons.

1. See A.A. 52 (2). For form and manner of taking the oath, see pp. 762-3. For solemn declaration in lieu of oath, see A.A. 52 (4), r. 28 and notes. See also, generally, notes to r. 26.

This rule prescribes, in accordance with A.A. 52 (2), the persons who are to administer the oath to the judge-advocate, officers under instruction, shorthand writer and interpreter. The accused has a right of objection to the shorthand writer or interpreter (r. 72 (c)), who may be sworn at any time during the trial (r. 72 (a) (b)); he has no right to object to the judge-advocate (r. 25 (b)) or to the officers under instruction.

(Form of proceedings, p. 744.)

**28—(A)** Where a person is permitted<sup>1</sup> to make a solemn declaration instead of taking the oath in the prescribed form and manner, the declaration shall be in the form or forms provided in the Second Appendix to these rules.<sup>2</sup>

Substitution of solemn declaration for oath.

(B) The declaration shall be made before some person authorised by these rules to administer the oath.

1. *I.e.*, under A.A. 52 (4).

2. See p. 763.

When a solemn declaration is made in lieu of an oath, a note to that effect should be made in the proceedings.

**29.** When the oath is administered to or the declaration made by the members of a court who are about to try several persons, the plural shall be substituted for the singular wherever required.

Form of oath in case of trial of several accused persons.

**30.—(A)** If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so.<sup>1</sup>

Swearing of person according to the form of his religion.

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience.<sup>2</sup>

1. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss a Bible while being sworn. He will be sworn standing and holding up his right hand. The forms of oath will be the same as those set out on pp. 762-3, except that after the words "Almighty God" will be inserted "as I shall answer to God at the Great Day of Judgment."

2. Where a person to be sworn objects to take the oath in the form prescribed (see pp. 762-3) or in the Scottish fashion (see (A) of this rule), or to make the prescribed form of declaration (see r. 28), and the court are satisfied of the sincerity of his objection, an oath will be administered in accordance with this provision.

A Mahomedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and locality, and it will be well to follow the practice of the civil courts of the district and if they receive an affirmation in lieu of an oath, to receive such affirmation.

*Prosecution, Defence, and Summing-up.*

**Arraignment of accused.** 31.—(A) After the members of the court and other persons are sworn as above mentioned, the accused shall be arraigned<sup>1</sup> on the charges against him.

(B) The charges upon which the accused is arraigned will be read to him, and he will be required to plead separately to each charge as soon as it has been read to him.<sup>2</sup>

1. See Ch. V, paras. 42-50. The accused should be arraigned by the president or judge-advocate (if any).

Arraignment consists of (1) calling upon the accused by his number (if any), rank, name and description; (2) reading the charge to him; and (3) asking him whether he is guilty or not guilty. When the accused is called upon by his number, rank, name, &c., as stated in the charge-sheet, he should be asked "Is that your number, rank, name and unit?"

Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first before arraignment upon the second or subsequent charge-sheets (see r. 62).

2. The plea of the accused must be taken upon all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them (see, however, r. 35 (c)).

The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president (r. 17 (e)), who will lay the charge-sheet before the court before arraignment, and the charge-sheet will then be annexed to the proceedings.

(Form of proceedings, p. 744.)

**Objection by accused to charge.**

32. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act,<sup>1</sup> or is not in accordance with these rules.<sup>2</sup> The court, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, will consider the objection in closed court and will either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority; or, if they are in doubt, they may adjourn to consult the convening authority.<sup>3</sup>

1. E.g., a charge laid under A.A. 24 (2) of losing by neglect the greatcoat of a comrade would not disclose an offence under that section of the Act.

2. See rr. 11-13.

3. For form to be followed upon the objection to a charge, see Variation, p. 744.

For procedure where it appears that the accused is, by reason of insanity, unfit to take his trial, see r. 57 and notes thereto.

(Form of proceedings, p. 744.)

**Amendment of charge.**

33.—(A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.<sup>1</sup>

(B) If on the trial of any charge<sup>2</sup> it appears to the court, at any time before they have begun to examine the witnesses,<sup>3</sup> that in the interests of justice any addition to, omission from, or alteration in,<sup>4</sup> the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with the amended charge after due notice to the accused.

1. A mistake in name or description will only be amended if it is clear to the court that the accused is the person intended to be charged in the charge-sheet and that he is not prejudiced in his defence by the mistake. For form to be followed, see Variation, p. 745.

2. The court may act under this paragraph whether an objection to the charge is taken by the accused, or the judge-advocate, or by a member of the court, and either before or after the arraignment (see rr. 23, 32).

3. *I.e.*, the witnesses on the substance of the charge, not those who are called as to objections to members or when a special plea to the jurisdiction is raised under r. 34.

4. If the addition, omission or alteration can be met by a special finding under r. 44 (*e.g.*, by omitting from the finding some articles alleged to have been lost by neglect or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended. But if the date is material, or if an addition requires to be made in the *particulars* of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the Army Act, the court must adjourn (see r. 32). For form to be followed, see Variation, p. 745.

(Form of proceedings, p. 745.)

34.—(A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court<sup>1</sup>; and, if he does so, and the court consider that anything stated in the plea shows that the court have not jurisdiction, they shall receive any evidence<sup>2</sup> offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and any reply by the prosecutor in reference thereto.

Special plea to the jurisdiction.

(B) If the court overrule the special plea they shall proceed with the trial.<sup>3</sup>

(C) If the court allow the special plea,<sup>4</sup> they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such a decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision<sup>5</sup> with respect to the plea, and proceed with the trial.

1. *I.e.*, a plea to the right of the court to try the accused on any charge, as distinct from a plea which relates to a particular charge; *e.g.*, a plea that the court is improperly constituted, either in respect of the rank or number of the members, or that the accused is not amenable to the jurisdiction. (See note 3 to r. 23.) A plea relating to a particular charge will be raised either under r. 32 or in bar of trial under r. 36.

2. *I.e.*, on oath.

3. The confirmation of the finding, after a plea to the jurisdiction has been overruled, will have the effect of confirming the decision of the court in overruling the plea. If, however, the confirming officer is of opinion that the plea was valid and should have been allowed, he must refuse to confirm the finding of the court and another court may legally be convened.

4. If the court allow the plea, the decision of the court cannot be overruled, but another court may legally be convened.

5. If a special plea to the jurisdiction were raised, *e.g.*, on the ground that the accused was not subject to military law as a soldier, under A.A. 176 (9), (10), and the court were in doubt as to the validity of the plea, they might record a special decision to that effect, and state that they had nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea had been overruled.

For form to be followed on a special plea to the jurisdiction, see Variation, p. 745.

Form of proceedings, p. 745.

General plea  
of "Guilty"  
or "Not  
guilty."

35.—(A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is over-ruled, or is dealt with by a special decision under Rule 34 (D), the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly,<sup>1</sup> either one or the other, a plea of "Not guilty")—shall be recorded on each charge on which he is arraigned.

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court<sup>2</sup>; but, before it is recorded, the president, on behalf of the court, shall ascertain that the accused understands the nature of the charge<sup>3</sup> to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure<sup>4</sup> which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty.<sup>5</sup>

(C) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the prosecutor may, after rule (B) of this rule has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.<sup>6</sup>

(D) A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered a plea of "Not guilty" shall be recorded and the trial shall proceed accordingly.<sup>7</sup>

1. *I.e.*, in some language not understood by the court or inarticulately. For form to be followed, see Variation, p. 745.

2. See, however, para. (D) of this rule.

3. This procedure must be adopted to prevent the accused pleading guilty under a misapprehension; *e.g.*, a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty because his arms have been in fact damaged though not wilfully; or a man charged with knowingly making a false statement in a document may, under a misapprehension, plead guilty because the statement made by him was in fact false, though it was not false to his knowledge. So, again, when arraigned on a charge of desertion, the accused may plead "guilty but I intended to return." This amounts to a plea of "not guilty" as (except as mentioned in Ch. III, para. 20) the intention not to return is an essential element in the offence of desertion. In each case the president must explain to the accused that he must plead "not guilty."

4. This is shown by r. 37. See also Ch. V, para. 47.

5. A plea of "guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned on a charge of losing by neglect a number of articles who pleads guilty in respect of some of those articles only, must be taken to have pleaded "not guilty" as regards the remaining articles. But as no procedure is prescribed in the rules whereby a special finding may be recorded on a plea of guilty, it would be the duty of the court to try the accused upon the actual charge on which he was arraigned, and, if necessary, make a special finding under r. 44 (D).

If the accused pleads guilty, a statement that the requirements of r. 35 (B) have been complied with must be recorded.

It must be recollected that there is nothing untrue in an accused person pleading not guilty, even though he committed the offence: his plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved. And, indeed, where the accused, while admitting the offence, wishes to show that it was committed in circumstances of great provocation, he must plead "not guilty" if he desires to prove the existence of such provocation out of the mouth of the witnesses for the prosecution.

who would not be called to give evidence if he pleaded guilty. (See, however, r. 37 (F) as to the power of the court.)

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see r. 37 (D).

6. If the prosecutor adopts the procedure provided by this paragraph the accused will not be entitled to a verdict upon the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges is placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges, see r. 37 (A).

7. This is in accordance with the practice of the civil courts and is intended to ensure that an accused person charged with an offence for which a death penalty can be awarded shall not be convicted without a full trial.

(Form of proceedings, pp. 744-6.)

**36.—(A)** The accused at the time of his general plea of "Guilty" Plea in bar. or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

- (i) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial, or has been dealt with summarily for the offence by his commanding officer or by an officer having power to deal summarily with the case, or a charge in respect of the offence has been dismissed<sup>1</sup>; or
- (ii) the offence has been pardoned or condoned<sup>2</sup> by competent military authority; or
- (iii) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years,<sup>3</sup> or in the case of a civil offence proceedings in respect of which must be commenced within a shorter period than three years,<sup>4</sup> more than that shorter period.

(B) If he offers a plea in bar the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered<sup>5</sup> and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and either shall adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused thereon.

(D) If the finding that a plea in bar is proved is not confirmed,<sup>6</sup> the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that a plea in bar is not proved, they shall proceed with the trial, but such a finding shall be subject to confirmation like any other finding of the court.

1. The Army Act provides that a person subject to military law is not liable to be tried for an offence of which he has been acquitted or convicted by a court-martial (s. 157), or by a civil court (s. 162 (6)), or for which he has been dealt with summarily, or a charge in respect of the offence has been dismissed (ss. 46 (7), 47 (5)). Further, a person is not liable to be tried for an offence which (except in the cases of mutiny, desertion and fraudulent enlistment), was committed more than three years before the date of the trial. (A.A. 161.) In all these cases a plea in bar of trial under this rule can properly be offered.

An accused person cannot be retried for desertion where, on the first trial for desertion, he was found guilty under A.A. 56 (3) of absence without leave and the proceedings were not confirmed. In such circumstances, a plea in bar of trial that he had previously been acquitted of the same offence must be allowed.

2. It has long been recognised that a military offence can be "condoned," *cf.* Clode, *Mil. Forces*, i, p. 173, Simmons (6th Edition), p. 235. For the purpose of barring a trial condonation means such conduct on the part of a competent authority—*i.e.*, an authority having power to determine that the charge should not be proceeded with—as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so; it must be a deliberate and intentional act, done with full knowledge of all material facts. The Duke of Wellington is quoted by Clode as having written in a Dispatch that the performance of a duty of honour or of trust after the knowledge of a military offence committed ought to convey a pardon. If, with full knowledge of the facts, competent authority removes an officer under P.W. 527, or allows him to resign, he should not afterwards be tried by court-martial for his offence. The fact that after trial, but before confirmation, the accused has been employed in active operations does not affect the legal validity of the sentence, but affords ground for pardon.

3. See note 1 above.

4. In general there is in civil courts (other than courts of summary jurisdiction) no limitation of time within which criminal proceedings may be commenced; but in a few cases; *e.g.*, carnal knowledge of a girl between 13 and 16,—proceedings must be commenced within a shorter period than nine months from the commission of the offence. In such cases, proceedings must be commenced in the military courts within the shorter period.

5. *I.e.*, evidence on oath.

6. If it is confirmed, it amounts to an acquittal and is final. It will be noted that the finding of the court upon a plea in bar of trial, whether in favour of or against the plea, is subject to confirmation.

For form to be followed on a plea in bar of trial, see Variation, pp. 745-6.

(Form of proceedings, pp. 745-6.)

Procedure  
after plea of  
"Guilty."

**37.—(A)** Upon the record of the plea of "Guilty," if there is any other charge in the same charge-sheet to which the plea is "Not guilty," the trial will first proceed with respect to every such other charge, and, after the finding on those charges, will proceed with the charges on which a plea of "Guilty" has been entered<sup>1</sup>; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.<sup>2</sup>

(b) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement<sup>3</sup> which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these rules in the case of a plea of "Not guilty."

(c) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.<sup>4</sup>

(d) If from the statement<sup>5</sup> of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the court that



the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.<sup>6</sup>

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) will take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.<sup>7</sup>

1. In the illustration of charge on p. 714, the charges are entirely distinct and not alternative, and therefore if the accused pleads "guilty" to the first charge and "not guilty" to the second charge, the court must first proceed to try him upon the second charge.

2. An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

Where two alternative charges are preferred and the accused pleads "not guilty" to the charge which alleges the more serious offence and "guilty" to the other, the court should try him under this paragraph as if he had pleaded not guilty to both charges. Having regard to r. 35 (c), the most serious of two or more alternative charges should always be placed first in a charge-sheet.

3. For procedure where the statement of the accused is inconsistent with his plea, see para. (d) of this rule and note 6 below.

4. The accused will always be asked, in the case of a plea of "guilty," whether he desires to call witnesses to character.

5. This would include a statement in mitigation of punishment under para. (c) as well as a statement with reference to the charge under para. (b) of this rule. For form to be followed, see Variation, p. 747.

6. The following examples are given of cases in which a plea of "guilty" should be altered to a plea of "not guilty" under this paragraph :—

- (a) Private A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back."
- (b) Private B, charged with stealing a tunic, states "I only borrowed it for the evening."
- (c) Private C, charged with striking his superior officer, states "I only did it to defend myself after he had struck me."
- (d) Private D is charged with sleeping on his post when a sentinel and makes no statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses depose that Private D was beyond the confines of his post when found asleep.
- (e) Corporal E is charged with disobeying a lawful command given by Corporal F his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Corporal F is junior to the accused. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in this paragraph.

If the court failed to act upon the provisions of this paragraph, the confirming officer should refuse confirmation and can order a new trial. (See A.A. 54 (8), 157 and notes.) If he confirms, the finding will be set aside.

Where the accused alleges provocation for the offence, it may be desirable to record a plea of "not guilty." (See note 5 to r. 35.)

A court cannot record a special finding under A.A. 56 on a plea of guilty; if an accused after pleading guilty to a charge of desertion states "I admit I was absent all the time but I intended to return," a finding of "not guilty of desertion but guilty of absence without leave" cannot be made, but the accused must be tried on a plea of "not guilty."

7. Although, under this paragraph, the permission of the court is required to enable the accused to call witnesses in extenuation of the offence and consequent mitigation of punishment, such permission should always be given. For form to be followed, see Variation, p. 747.

(Form of proceedings, pp. 746-7.)

Withdrawal  
of plea of  
"Not  
guilty."

38. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37.<sup>1</sup>

1. The court must take care that the accused understands the effect of his action in withdrawing his plea.

Plea of "Not  
guilty,"  
application  
for adjourn-  
ment, and  
case for the  
prosecution.

39. After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows :—

- (A) The court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these rules relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer.

If the accused shall make any such application the court shall hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto; and if it shall appear to the court that the accused has been prejudiced by any non-compliance with any such rule of procedure,<sup>1</sup> or that he has not had sufficient opportunity of preparing his defence, they may grant such adjournment as may appear to them in the circumstances to be proper.

- (B) The prosecutor<sup>2</sup> may, if he desires, and shall if required by the court, make an opening address,<sup>3</sup> and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail.
- (C) The evidence for the prosecution shall then be taken.<sup>4</sup>
- (D) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address (if any), and he must be sworn, and give his evidence in detail.<sup>5</sup>
- (E) He may be cross-examined<sup>6</sup> by or on behalf of the accused, and afterwards may make any statement which might be made by a witness on re-examination.

1. Non-compliance with rules relative to procedure before trial would not provide a valid reason for adjournment, unless the accused has, in the opinion of the court, been prejudiced thereby, but if the court have any doubt in the matter, the proceedings should be adjourned.

2. As to the duties of the prosecutor, see r. 60 and note 1; Ch. V, para. 52; K.R. 645.

3. In cases of complexity (e.g., cases of fraudulent misapplication) the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not propose to substantiate by evidence. The address of the prosecutor may be in writing; in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see r. 95 (c).

4. For general provisions as to evidence, see Ch. VI, and rr. 73-86. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any

omissions. It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved: *e.g.*, on a charge laid under A.A. 27 (1) of knowingly making a false accusation against Private A, it must be proved—

- (1) that the accused made the accusation in question against Private A;
- (2) that it was false;
- (3) that the accused made it knowing it was false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive questions.

For the duty of the president, see r. 59 and note.

If the same person gives evidence in more than one case tried by the same court, he must be sworn as a witness in each case, even if all such cases are tried on a single day.

5. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (*e.g.*, on active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to swear generally as to the truth of the statements contained in such address.

Documentary evidence will be read by the president or judge-advocate; it should then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president to be true copies.

6. Any witness may be cross-examined by the opposite party and re-examined by the person calling him on matters raised by the cross-examination. (r. 84 (A)).

As to the general principles to be observed in cross-examination and re-examination, see Ch. VI, paras. 114–120.

As to questions by or on behalf of the court, see rr. 85 and 86.

(Form of proceedings, pp. 747–9.)

40.—(A) At the close of the evidence for the prosecution<sup>1</sup> the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination.<sup>2</sup>

*Procedure where no witnesses to facts (except accused) called for defence.*

(B) The accused will then be asked<sup>3</sup> whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case<sup>4</sup> other than himself.

(C) If the accused states that he wishes to give evidence as a witness himself but does not intend to call any other witness to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, will be as follows:—

- (i) The accused will give evidence immediately after the close of the evidence for the prosecution.<sup>5</sup>
- (ii) The accused may, if he wishes, call witnesses as to his character.<sup>6</sup>
- (iii) The prosecutor may then make a final address<sup>7</sup> for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused.
- (iv) The accused or counsel or the defending officer (as the case may be) may then make a closing address in his defence.<sup>8</sup>

(D) If the accused states that he does not wish to give evidence as a witness himself and does not intend to call any witnesses to the facts of the case the procedure will be as follows:—

- (i) If he is not represented by counsel or by an officer subject to military law :—
  - (a) The accused may, if he wishes, call witnesses as to his character.
  - (b) The prosecutor may make a final address for the purpose of summing up the evidence for the prosecution.
  - (c) The accused may then make an address in his defence giving his account of the subject of the charge against him.<sup>9</sup> The address may be made orally or in writing.<sup>10</sup>
- (ii) If he is represented by counsel or by an officer subject to military law :—
  - (a) The accused may make a statement giving his account of the subject of the charge against him. This statement may be made orally or in writing but the accused must not be sworn and no question may be put to him by the court or by any other person.<sup>11</sup>
  - (b) The accused may, if he wishes, call witnesses as to his character.
  - (c) Counsel or the defending officer (as the case may be) may then make a closing address.
  - (d) If the accused has made the statement referred to in (a) the prosecutor may reply ; but if the accused has made no such statement, the address of the prosecutor will precede the closing address of counsel or the defending officer.<sup>12</sup>

1. It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore, be called upon for his defence. The court will consider this submission in closed court and, if they are satisfied that it is well founded, must acquit the accused. This submission may be made in respect of any one or more charges in a charge-sheet. (See also note to r. 70).

2. The judge-advocate or, if there is none, the president must explain in simple language to the accused, especially if he is not represented by counsel or defending officer, that he need not give evidence on oath unless he wishes to do so. He must also be told that if he gives sworn evidence he is liable to be cross-examined by the prosecutor and questioned by the court and judge-advocate. He should also be informed that evidence upon oath will naturally carry more weight with the court than a mere statement not upon oath.

3. *I.e.*, by the judge-advocate or, if there is none, by the president.

4. As will be noted from the succeeding paragraphs of this rule, the whole course of procedure in connection with the case for the defence will depend upon the answer of the accused to this question.

Witnesses to extenuating circumstances are witnesses to the facts of the case. The fact that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available, or the prosecutor, in cross-examination of the accused, challenges him to support a statement made by him in evidence by the testimony of another witness.

As to the evidence of the wife of the accused, see r. 80, and notes.

5. See r. 80 (r). It is the duty of counsel for the defence or defending officer (if any) to conduct the examination of the accused (if he gives evidence) and of the witnesses for the defence. For cross-examination, &c., see note 6 to r. 39.

The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence (see r. 60 (c)), and the court should, if necessary, adjourn to allow him time for its preparation.

6. The calling of witnesses to character does not affect the order of proceedings prescribed under this and the following rule.

7. The address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally, see r. 95 (c).

In summing up the evidence, the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not strain or overstate that view of the facts which it is his duty to present to the court; he must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor or any want of moderation may lead to the setting aside of the proceedings. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

If the prosecutor, contrary to r. 80 (a), comments on the failure of the accused or his wife to give evidence, the proceedings may be invalidated (and see r. 80 (a) and note).

As to the duties of the prosecutor, see r. 80 and notes; also Ch. V, para. 52.

8. The accused has the privilege, whether he has given evidence or not, of making statements in his address which are unsupported by evidence. As to statements made by the accused not on oath, see note 9 below. As to the rights and duties of counsel and defending officer, see rr. 87-92.

9. The address here referred to is, in effect, a statement of the facts upon which the accused, when he does not give sworn evidence, relies for his defence, and the court will treat it as his defence to the charge though the accused has not by giving evidence on oath submitted it to the test of cross-examination. A statement which could have been made on oath will not carry with the court the same weight as sworn testimony.

10. If made orally, it should be taken down verbatim so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing, it should be read and attached to the proceedings. The accused cannot be questioned by the court or any other person upon an unsworn statement or address.

11. See note 10 above.

12. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (r. 92 (c)), and the same restriction is placed upon a defending officer (r. 87 (c)).

For procedure when two or more persons are tried together, see r. 61 and note.

(Form of proceedings, pp. 749-752.)

41.<sup>1</sup>—(A) If the accused states that he wishes to give evidence himself and to call witnesses to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, will be as follows :—

Procedure where witnesses called for defence.

- (i) The accused or, if he is represented by counsel or by a defending officer, then such counsel or defending officer may make an opening address<sup>2</sup> for the defence.
- (ii) The accused will give evidence as a witness,<sup>3</sup> and call his other witnesses, including, if he so desires, witnesses as to character.
- (iii) After the evidence of all the witnesses has been taken, the accused or counsel or the defending officer (as the case may be) may make a closing address.
- (iv) The prosecutor may reply.

(B) If the accused states that he does not intend to give evidence himself but intends to call witnesses to the facts of the case, the procedure will be as follows :—

- (i) If he is not represented by counsel or by an officer subject to military law—
  - (a) The accused may make an opening address giving his account of the subject of the charge against him. The address may be made orally or in writing.

- (b) The accused will then call his witnesses including, if he so desires, any witnesses as to character.
  - (c) After the evidence of all the witnesses has been taken, the accused may make a closing address.
  - (d) The prosecutor may reply.
- (ii) If he is represented by counsel or by an officer subject to military law—
- (a) The accused may make a statement giving his account of the subject of the charge against him. This statement may be made orally or in writing but the accused must not be sworn and no question may be put to him by the court or by any other person. If the accused makes no such statement, counsel or the defending officer (as the case may be) may make an opening address.
  - (b) The accused will then call his witnesses, including, if he so desires, any witnesses as to character.
  - (c) After the evidence of all the witnesses has been taken counsel or the defending officer (as the case may be) may make a closing address.
  - (d) The prosecutor may reply.

1. The notes to the preceding rule should be referred to generally. It will be noted that, in all cases falling under this rule, the prosecutor has a right of reply.

2. Counsel (r. 92 (c)) and defending officer (r. 87 (c)) are not permitted in an opening address to state as facts matters which they do not intend to prove in evidence.

3. The accused is entitled to give his evidence at any time during the hearing of the evidence for the defence, although he has previously stated that he does not apply to give evidence himself. He should, however, usually give his evidence before any other witness for the defence, and should be warned that if he gives his evidence after hearing that of the other witnesses for the defence, the value of it may be considerably discounted.

(Form of proceedings, pp. 749-752.)

Summing-up  
by judge-  
advocate.

42.—(A) The judge-advocate (if any) will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court.<sup>1</sup>

(B) After the summing-up of the judge-advocate, no other address shall be allowed.

1. The judge-advocate has a right to sum up when he considers it necessary or desirable. Generally speaking, a summing-up is unnecessary in simple cases; but even where the facts are simple, a legal direction is often necessary (see r. 103 (e)). The judge-advocate should always sum up in cases involving fraud or indecency or where civil offences are charged, and he must be careful where necessary to advise the court upon the law relating to confessions, (see Ch. VI, paras. 72-83), to corroboration and to the evidence of accomplices (see Ch. VI, paras 45 and 86).

In summing up the evidence, the judge-advocate must be careful not to indicate to the court any opinion which he may have formed as to the facts. He may, in his discretion, comment upon the fact that the accused has not given evidence upon oath or called his wife as a witness. (See also r. 103 (h)).

The summing-up may, but need not, be in writing: if not in writing, see r. 95 (c).

If a summing-up is considered unnecessary, a record to that effect must be made in the proceedings.

For the powers and duties of a judge-advocate, see r. 103.

(Form of proceedings, p. 752.)

*Finding and Sentence.*

43.—(A) The court will deliberate on their finding in closed court.<sup>1</sup> Consideration of finding.

(B) The opinion of every member of the court as to the finding will be given by word of mouth<sup>2</sup> on each charge separately.

1. See r. 63.

2. The opinions of members must be given orally. As to taking opinions, see r. 69 and note.

The president should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered. If, for example, the charge is laid under A.A. 9 (1), he will ask them to discuss the bearing of the evidence upon the following questions (a) was a command given? (b) was it a lawful command? (c) was it given by the superior officer of the accused? (d) personally? (e) in the execution of his office? (f) was the command disobeyed? (g) in such a manner as to show a wilful defiance of authority? (h) did the accused know that the person giving the order was his superior officer?

Similarly, where the charge laid is under A.A. 16 or 40, the questions to be considered should be:—(a) have the facts alleged in the particulars of the charge been proved in evidence? if they have, (b) do such facts amount to scandalous conduct or conduct to the prejudice of good order and military discipline? (as the case may be).

If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been entirely established in evidence, they must consider their powers of making a special finding, either under A.A. 56 (see note to that section) or under r. 44 (see note 6 to that rule).

The members of courts-martial must remember (1) that it is a fundamental maxim of English law that an accused person is presumed to be innocent until he has been proved to be guilty, and (2) that their finding must be based upon the evidence given before them.

Any statement made by the accused not upon oath must be carefully considered, and although the court will naturally attach less weight to such a statement than to sworn evidence subjected to the test of cross-examination, it will sometimes be of value, particularly if it is in any respect corroborated by evidence from other sources.

At any time before the finding has been arrived at, the court may be reopened to enable a witness to be called or recalled and examined by them through the president or judge-advocate. (See r. 86 (v)). It is also permissible, where a shorthand writer has been employed, to re-open the court to enable any portion of the evidence already given to be read out by him.

As to form and record of finding, see r. 44 and notes.

(Form of proceedings, pp. 752-3.)

44.—(A) The finding on every charge upon which the accused is arraigned<sup>1</sup> will be recorded and, except as mentioned in these rules, will be recorded simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."<sup>2</sup> Form and record of finding.

(B) Where the court are of opinion as regards any charge that the facts proved do not disclose the offence charged<sup>3</sup> or any offence of which he might under the Army Act legally be found guilty on the charge as laid,<sup>4</sup> the court will acquit the accused of that charge.

(C) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or any offence of which he might under the Army Act legally be found guilty on the charge as laid, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which they find to be proved, and may, if necessary, adjourn for that purpose.<sup>5</sup> Upon receiving the opinion of the confirming officer the court will reassemble in closed

court to record their finding and shall not receive any further evidence.

(D) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding.<sup>6</sup>

(E) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.<sup>7</sup>

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge.

(G) If the court think that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, they may, before recording a finding on those charges refer to the confirming authority for an opinion, setting out the facts which they find to be proved and stating that they doubt whether those facts constitute in law the offence stated in such one or another of the charges and may, if necessary, adjourn for that purpose. Upon receiving the opinion of the confirming officer the court will reassemble in closed court to record their finding and shall not receive any further evidence.<sup>8</sup>

1. This includes alternative charges, except in the cases which come within s. 35 (c).

2. In the case of an acquittal on every charge, the president must date and sign the proceedings (r. 45 (A)). The judge-advocate (if any) must also sign (r. 45 (B)). See generally r. 45.

A finding of "honourable acquittal," which may be recorded in the case of N.C.Os. and privates as well as officers, is incorrect unless the charge affects the honour of the person charged. The Duke of Wellington (Well. Desp., Vol. 5, 221-2) expressed the following views upon the matter:—

"It is difficult and needless at present to define in what cases honourable acquittal is peculiarly applicable; but it must appear to all persons to be objectionable in a case in which any part of the transaction which has been the subject of investigation before the court-martial is disgraceful to the character of the party under trial. A sentence of honourable acquittal by a court-martial should be considered by the officers and soldiers of the army as a subject of exultation, but no man can exult in the termination of any transaction, a part of which has been disgraceful to him; and although such a transaction may be terminated by an honourable acquittal by a court-martial, it cannot be mentioned to the party without offence, or without exciting feelings of disgust in others; these are not the feelings which ought to be excited by the recollection and mention of a sentence of honourable acquittal."

It may be said that an "honourable acquittal" is generally inappropriate unless the conduct of the accused throughout the transactions investigated by the court has been irreproachable.

3. *E.g.*, where a man is charged with receiving property knowing it has been stolen, and the facts show that, although the property was in fact stolen, the accused was unaware that it was stolen property, the court must acquit as the accused would not have committed the offence charged.

4. *I.s.*, under A.A. 56.

5. Before referring to the confirming authority under this rule, the court must have arrived at a decision as to the facts which they find to be proved, and the opinion of the confirming authority will be sought as to whether,



upon the facts so found to be proved, the accused can legally be found guilty. The court cannot refer to the confirming authority for any opinion as to the facts as to which they are the sole judges.

The reason for the reference should be recorded (see p. 753).

The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

6. The special finding here referred to relates only to the particulars of the charge, and not to the statement of the offence, as to which see A.A. 56 and notes. Before recording a special finding under this paragraph, the court must be satisfied that the facts which they find to be proved, subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit: e.g., on a charge against a soldier of losing by neglect a greatcoat and a waistbelt, the court may properly find the accused "guilty of the charge except that he did not lose a waistbelt," but they could not legally find him "guilty of the charge except that he made away with and did not lose" the articles in question.

An immaterial variation of date may be made by special finding, but in cases of desertion or absence without leave the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge would not be permissible.

On a charge of striking his superior officer—Serjeant A—with his fist in the face, the court could properly except the words "in the face," but it could not make a special finding substituting Serjeant B for Serjeant A.

On a charge of fraudulently misapplying £100, a special finding that the sum misapplied was £50 would be permissible; but a special finding omitting from the particulars of the charge the words "with intent to defraud" would be tantamount to an acquittal.

7. See note 6 above.

8. For general procedure, see note 5 above, and Variation, p. 753. When the court have decided to convict upon one of two or more alternative charges, they will record a finding of "not guilty" upon the other alternative charge or charges. (See para. (A) of this rule and note 1.)

(Form of proceedings, pp. 752-3.)

45.—(A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court,<sup>1</sup> and if there are no other charges upon which the trial proceeds, the accused will be released. Procedure on acquittal on every or any charge.

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted as soon as possible in like manner as is directed by these rules<sup>2</sup> in the case where the findings require confirmation.

(C) If the finding on one or more, but not all, of the charges in a charge-sheet is "Not guilty," such finding or findings of "Not guilty" will be announced at once in open court.<sup>3</sup>

1. This is required by A.A. 54 (3).

2. Rr. 50 and 97. Confirmation is not required in the case of an acquittal.

3. See A.A. 54 (3).

Where a special finding is made under A.A. 56, e.g., that the accused is not guilty of desertion but guilty of absence without leave, this is not an acquittal for the purposes of this paragraph and this finding will not be announced in open court.

(Form of proceedings, p. 752.)

46.—(A) If the finding on any charge is "Guilty," then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, shall, wherever possible, take evidence of and record<sup>1</sup> the character, age, service, rank, and any recognised acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in con- Procedure on conviction.

finement on any previous sentence,<sup>2</sup> and any deferred pay, naval, military, or air force decoration, or military reward,<sup>3</sup> of which he may be in possession or to which he is entitled.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books<sup>4</sup> respecting the accused person, and identifying the accused as the person referred to in that summary.

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(D) The accused may cross-examine any such witness, and may call witnesses to rebut any such evidence<sup>5</sup>; and if the accused so requests, the regimental books, or a duly certified copy<sup>6</sup> of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

When all the evidence on the above matters has been given, the accused may address the court thereon.

(E) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment<sup>7</sup> in addition to that to be awarded by the sentence of the court, it will be the duty of the prosecutor to call the attention of the court to the fact, and it will be the duty of the court to enquire into the nature and amount of such additional punishment.

1. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case they will record upon the proceedings the reasons for such impracticability.

The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in (B) of this rule. But oral evidence of good character is always permissible; if given on oath by the accused himself he may be cross-examined as to character (see r. 80 and notes); if he calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.

2. The court will also consider the length of time during which the accused has been in confinement awaiting trial upon the present charge or charges.

3. For definition of *decoration* and *military reward*, see A.A. 190 (18) and (19).

4. Previous convictions, &c., of the accused will be proved by the production of a verbatim extract from the regimental books (A.F. B.296) duly completed by the officer in charge of these books; (A.A. 163 (1) (g) and (h), K.R. 1629-1632.) As to regimental books, see K.R. 1598 and App. XXV. If the accused challenges the correctness of the extract from the regimental books, see (D) of this rule. If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by a certificate in accordance with A.A. 164. As to civil convictions, see also K.R. 648, 1630.

The witness producing the extract from the regimental books and the statement as to age, service, rank, &c., of the accused should be the adjutant or some other officer. He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

5. The accused may give evidence himself to rebut the evidence given on the part of the prosecutor as to his character, age, service, &c. But if he puts his character in issue, see r. 80.

6. *I.e.*, certified by the officer having custody of the original book. (A.A. 163 (1) (h)).

7. This means such punishment as is contemplated by the first sentence of K.R. 652 (a).

(Form of proceedings, pp. 753-6.)

47. Where a court-martial or an officer dealing summarily with a charge under Section 47 of the Army Act desires to sentence an officer to forfeit seniority of rank,<sup>1</sup> the form of punishment may be that he take rank and precedence in his corps, or in the Army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment; or that he take precedence in the rank held by him in his corps, or in the Army, or in both, as if his name had appeared a specified number of places lower<sup>2</sup> in the list of his corps, or of the Army, or in both.

Mode of forfeiting seniority of rank.

Where a court-martial for the trial of a warrant or non-commissioned officer,<sup>3</sup> or an officer dealing summarily with a charge against a warrant officer under Section 47 of the Army Act desires to award the sentence of forfeiture of seniority of rank, the form of punishment will be that he take rank and precedence as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of his said appointment.

1. See A.A. 44 (f); K.R. 555-7.

2. This form of forfeiture of seniority of rank is intended to apply to cases where the dates of appointment of a large number of officers are identical, such as in the R.A., R.E., R.A.S.C., &c., and where forfeiture of even one day's seniority might, in its effect, constitute too severe a punishment for the offence, which nevertheless would not be adequately met by a severe reprimand. The court or the officer dealing summarily with the case will be able to gauge the effect of such a sentence by a reference to the current Army List.

3. As to the effect of such a sentence in the case of a N.C.O., see A.A. 44, note 12.

(Form of proceedings, pp. 757-8.)

48. The court shall award one sentence in respect of all the offences of which the offender is found guilty,<sup>1</sup> and that sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.<sup>2</sup>

Sentence.

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.

For procedure upon a death sentence, see note (b) on p. 762.

As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction, see r. 71 (b).

The sentence must be a sentence authorised by the Army Act (see s. 44), e.g., a court-martial cannot award a sentence of confinement to barracks, or sentence an offender to restore stolen property though an order of restitution may subsequently be made under A.A. 75.

For observations on the duty of the court in awarding sentence, see Ch. V, paras. 76-85, and K.R. 652.

For procedure in voting upon the sentence, see r. 69.

2. The object of this portion of the rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a general court-martial on a charge of desertion, after a previous conviction for that offence, and also upon a charge of drunkenness when not on duty, a sentence of penal servitude awardable in respect of the first charge will be valid, although a sentence of detention with or without a fine is the maximum sentence which could have been awarded upon the second charge.

(Form of proceedings, pp. 756-9.)

Recommend-  
ation to  
mercy.

**49.**—(A) If the court make a recommendation to mercy they shall give their reasons for their recommendation.<sup>1</sup>

(B) If the court recommend any restoration of service under Section 79 of the Army Act, the recommendation, with the reasons for it, shall be entered in the proceedings.

(C) The number of opinions<sup>2</sup> by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court (see A.A. 53 (9)).

As to the circumstances in which a recommendation to mercy should be made, see Ch. V, para. 84.

2. A recommendation to mercy is a matter which the court has to decide under para. (A) of r. 69.

(Form of proceedings, p. 759.)

Signing and  
transmission  
of proceed-  
ings.

**50.** Upon the court awarding the sentence, the president shall date and sign the sentence,<sup>1</sup> and such signature shall authenticate the whole of the proceedings,<sup>2</sup> and the proceedings, upon being signed by the judge-advocate (if any) shall as soon as possible be transmitted for confirmation in the manner provided by Rule 97 of these rules.

1. It is essential that the date of the sentence should be inserted, as under A.A. 68 a term of penal servitude, imprisonment or detention is reckoned to commence on the day on which the sentence and proceedings were signed by the president. (See note 3 to A.A. 68.)

The proceedings must not be signed by the members of the court other than the president.

2. Including the documentary evidence produced at the trial. As a rule certified copies of original documents and not the originals themselves should be attached to the proceedings. (K.R. 650.)

(Form of proceedings, p. 759.)

### *Confirmation and Revision.*

Procedure of  
confirming  
officer.

**51.**<sup>1</sup>—(A) In the case of a finding which does not require confirmation,<sup>2</sup> the confirming officer shall not make any remarks in the proceedings, but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by His Majesty's Regulations.<sup>3</sup>

(B) In the case of findings and sentences which require confirmation the confirming authority—

(i) May direct the re-assembly of the court for the revision of the finding and sentence, or either of them, stating the reasons for revision<sup>4</sup>; and

(ii) Upon receiving the proceedings, whether original<sup>5</sup> or revised, may confirm<sup>6</sup> or refuse confirmation, or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.<sup>7</sup>

1. This rule must be read in conjunction with A.A. 54 and r. 52.

As to the action which may be taken by a confirming officer upon receipt of the proceedings, see K.R. 659.

2. *I.e.*, an acquittal.

3. See K.R. 664.

4. See r. 52 for procedure on revision. Not more than one revision can be made, nor can evidence be given on revision. (A.A. 54 (2)). Proceedings on revision must be in closed court; (r. 52 (A)).

A finding of insanity (see A.A. 130 and r. 57) requires confirmation and may be sent back for revision.

A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

The object of revision will generally be to cure defects in the finding or sentence, or both, or to give the court an opportunity, upon reconsideration, of acquitting or passing a more lenient sentence upon the offender. The confirming authority cannot recommend the increase of a sentence, nor can the court upon revision increase the sentence previously awarded. (A.A. 54 (2)).

If the sentence originally awarded by the court is wholly illegal, *e.g.*, a sentence of dismissal where the officer is convicted under A.A. 16 of scandalous conduct, or a sentence of reduction to the ranks awarded to a lance-corporal, or a sentence of confinement to barracks awarded to a soldier, it is null (see note to r. 55), and the court, on revision, may award any legal sentence, even if such sentence is, in effect, more severe than the original award. This procedure is not, strictly speaking, a revision of the sentence at all.

If the sentence originally awarded is illegal in the sense that it is in excess of the sentence authorised by law, the court, on revision, may award any legal sentence, *e.g.*, if a soldier, not on active service, is charged with drunkenness and a sentence of nine months' detention is awarded, the court upon revision may pass a new sentence not exceeding six months' detention. In such a case, however, revision is not essential, as a confirming officer under r. 55 may vary the sentence so that it shall not be in excess of the punishment authorised by law.

For duties of the confirming officer where a sentence is illegal or irregular, see K.R. 665.

5. *I.e.*, where either no revision has taken place because no order for revision has been made, or, if an order has been made, it cannot be carried out owing to dissolution of the court (see note 1 to r. 52).

Under A.A. 68 (1) the term of penal servitude, imprisonment or detention commences on the date of the *original* sentence.

6. Where a C.O. has investigated a case in his capacity as C.O., he cannot, except where he has authority to convene a court-martial under K.R. 617(b), subsequently confirm the proceedings of a court-martial arising out of the same matter. If he purports so to act in a case outside the exception, the proceedings are not void but must be confirmed by a properly qualified authority. (K.R. 660).

7. For forms of confirmation, &c., see pp. 760-1.

As to comments by confirming officer upon proceedings of courts-martial, see K.R. 662, 664.

(Form of proceedings, pp. 759-761.)

52.—(A) Where the finding or sentence is sent back for revision, the court shall re-assemble in closed court<sup>1</sup>, and shall not receive any further evidence.<sup>2</sup> Procedure on revision.

(B) Where the finding is sent back for revision, and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding,<sup>3</sup> and, if the new finding involves a sentence,<sup>4</sup> pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate (if any), shall as soon as possible be transmitted for confirmation in the manner provided in Rule 97 of these rules.<sup>5</sup>

1. See r. 63.

The court should be re-assembled as soon as practicable.

If the court upon re-assembly is reduced, by death or otherwise, below the legal minimum (see note 4 to r. 17 and note to r. 18), it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority. If the president dies or is unable to attend within a reasonable time, the convening officer may

appoint the senior member (if of sufficient rank) as president, provided that the court is not thereby reduced below the legal minimum. (See A.A. 53 (2)).

2. See A.A. 54 (2).

3. Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence. (See A.A. 54 (2) and notes to preceding rule.)

4. If the revised finding is an acquittal or a finding of insanity (see A.A. 130 and r. 57), no sentence is involved. If a court, on revision, revoke their original finding upon any charge, the original sentence automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh (see note 3 to A.A. 54); if the court omit to do so, the accused is not legally under any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision which is prohibited by A.A. 54 (2).

5. See also K.R. 667, 669-673.

(Form of proceedings, pp.759-760.)

Promulga-  
tion.

**53. The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service.<sup>1</sup> Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.**

1. See K.R. 668. For form of minute of promulgation, see p. 761.

A sentence of cashiering or dismissal takes effect from the date of promulgation.

A finding of acquittal upon all of the charges preferred must be pronounced at once in open court (A.A. 54 (3)), and this, when taken in conjunction with the discharge from custody of the accused, operates as sufficient promulgation of the acquittal. But where the court acquits the accused upon one or more but not upon all the charges preferred against him, the findings of acquittal, though pronounced in open court in accordance with A.A. 54 (3), should also be promulgated under this rule together with the findings of guilty.

All special findings must be promulgated in the forms in which they are made.

In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, &c., will be sufficient promulgation under this rule.

If a sentence of penal servitude, imprisonment or detention is confirmed and not suspended in accordance with A.A. 57A, the C.O. of the offender as soon as may be after promulgation of the sentence will sign the order for his committal (see App. III) to some prison or detention barrack in accordance with any general or special instructions received from superior authority. See K.R. 676, 681. As to commitment abroad, see K.R. 677, 682-685.

(Form of proceedings, p. 761.)

Mitigation  
of sentence  
on partial  
confirma-  
tion.

**54.—(A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of those charges, that authority shall take into consideration the fact of such non-confirmation, and shall mitigate, remit, or commute the punishment awarded as may seem just, having regard to the offences in the charges the findings on which are confirmed.<sup>1</sup>**

**(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of those charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit or commute**

the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and mitigate, remit, or commute the punishment awarded according as may seem just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.<sup>2</sup>

(c) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute<sup>3</sup> the punishment awarded by the sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by that sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment.

1. As to meaning of mitigation, remission and commutation, see notes 3-5 to A.A. 57.

Where a soldier has been convicted of (1) desertion, after a previous conviction for that offence, and (2) escaping from confinement, and has been sentenced to penal servitude, and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of penal servitude, he is bound under this rule to commute the sentence at least to imprisonment, the maximum sentence under A.A. 22. If, however, the confirming officer confirms the finding on the first charge but not that on the second charge, he may mitigate or commute it to some less punishment if he considers that a sentence of penal servitude on the charge of desertion alone is, in the circumstances, too severe.

See generally as to mitigation and commutation, K.R. 661.

2. This paragraph gives to the authority prescribed under A.A. 57 (2) and r. 126 (b) similar powers to do after confirmation that which, under para. (a) of this rule, the confirming authority may do before confirmation. But it will be noted that the prescribed authority can only act under this paragraph where any one of the charges, or the finding thereon, is found to be *invalid*, and has been set aside. The prescribed authority derives the ordinary powers of mitigation, &c., from A.A. 57 (2).

As to setting aside convictions by the confirming officer, see K.R. 665.

3. As to the commuting authority, see A.A. 57 (2) and r. 126 (b).

**55.** If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence as so varied of the court-martial.<sup>1</sup>

1. The object of this rule is to prevent the proceedings of courts-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who award sentences which are informal or in excess of their powers. Confirming officers should, if practicable, order a revision of sentence, but if revision is impracticable and they decide to act under this rule, they should call the attention of the members of the court to the informality or irregularity of the sentence.

The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null, e.g., a sentence of discharge with ignominy from His Majesty's service awarded by a district court-martial to a

Confirmation notwithstanding informality in, or excess of, punishment.

warrant officer (see also examples of illegal sentences in note 4 to r. 51). In such cases the court must be re-assembled for the purpose of passing a valid sentence. This proceeding is not, strictly speaking, a revision of the sentence, and therefore the provisions of A.A. 54 (2) as to increase of sentence on revision would not apply.

The following are examples of cases where the confirming officer may properly act under this rule:—

- (a) a sentence of 12 months' detention should be varied to a sentence of detention for one year (see K.R. 654).
- (b) a sentence of three years' imprisonment with hard labour, which is in excess of the punishment authorised by law, must be varied to a sentence of two years' imprisonment with hard labour or some less punishment. (See A.A. 44 (c) and (k)).
- (c) a sentence of eight months' detention for an offence of drunkenness committed by a soldier not on active service or on duty, must be varied to a sentence of six months' detention or less. (See A.A. 19.)

(Form of proceedings, p. 760.)

Confirmation notwithstanding technical or other deviation.

**56.** Whenever it appears that a court-martial had jurisdiction to try any person; and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer, or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.<sup>1</sup>

1. This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case. But before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the Rules, or through any defect or objection. Whether or not a deviation, &c., is of a substantial kind will often depend upon the circumstances.

The following examples may be given of cases where the confirming officer might properly act under this rule, if satisfied that the accused has suffered no injustice:—

(a) Failure by the court to comply with r. 39 (A) (application for adjournment).

(b) Failure by the court to comply with r. 83 (a) (reading over evidence).

The court should not allow any technicality to interfere with the accused in the making of his defence.

The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.

It may be convenient to note here that if, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all the consequences of his trial and the record of the conviction erased. (See K.R. 665.)

If the sentence alone is declared invalid, the finding will stand good and therefore the soldier convicted will suffer the forfeitures or penalties which are consequential on conviction.

Where punishment is remitted, the remission, unless otherwise expressed, will not extend to any forfeiture incurred automatically by reason of the conviction. (K.R. 665.)



*Insanity.*

**57.—(A)** Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he was guilty of the act or omission charged, but was insane at the time when he did the said act or made the said omission,<sup>1</sup> the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.<sup>2</sup>

Provisions as to finding of insanity and custody of insane person.

(B) If the finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where the finding is confirmed, then, until the directions of His Majesty as to the disposal of the accused are known, or in the case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

1. See generally A.A. 130.

For forms of findings of insanity, see Variations on pp. 745 and 753.

It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he did the act or made the omission charged, but may not be sane enough to take his trial; while on the other hand, a man insane at the time when he did the act or made the omission charged may have recovered sufficiently to take his trial. In the former case, if he recovers before His Majesty's directions as to his disposal are known, he should be ordered for trial.

2. In both cases mentioned confirmation is required.

An application that the accused is, by reason of insanity, unfit to take his trial should be made before arraignment. The application will normally be made by counsel for the defence or defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may, of course, be given.

(Form of proceedings, pp. 745 and 753.)

*General Provisions as to Proceedings of Court.*

**58.** The members of a court-martial will take their seats according to their army rank.

Seating of members.

**59.—(A)** The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and in a manner befitting a court of justice.<sup>1</sup>

Responsibility of president.

(B) It is the duty of the president to see that justice is administered, and that the accused has a fair trial,<sup>2</sup> and that he does not suffer any disadvantage in consequence of his position as a person under trial or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise.

1. The court should always have at its disposal the Army Act, Rules of Procedure, and King's Regulations, and any other official books or orders relating to courts-martial.

The president should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

2. If the accused is not represented by counsel or defending officer, the president should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a judge-advocate, he has a similar duty (r. 103 (g)). If a witness gives evidence

different from that given by him when the summary of evidence was taken, he should be questioned as to the difference.

The president should always put to the witnesses (including the accused if he gives evidence) any questions which appear to him necessary or desirable for the purpose of eliciting the truth. (See r. 86 and notes.)

Power of  
court over  
address of  
prosecutor  
and accused.

**60.—(A)** It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.<sup>1</sup>

(B) The prosecutor may not refer to any matter not relevant<sup>2</sup> to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor, and to prevent the prosecutor from commenting<sup>3</sup> at any time on the failure of the accused or his wife to give evidence.

(C) The court should allow great latitude to the accused in making his defence<sup>4</sup>; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur.<sup>5</sup> The court may caution the accused as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of irrelevance.

1. The prosecutor is an officer whose duty it is to see that justice is done, not a partisan intent on securing a conviction independently of the justice of the case. (See Ch. V, para. 52.) He should therefore put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, *e.g.*, he should himself produce any available evidence of provocation which might mitigate punishment.

It occasionally happens that a soldier charged with desertion was to the knowledge of the prosecutor arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under r. 44 (b).

The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. (See Ch. III, para. 48, and K.R. 645.)

The prosecutor should always inform the court if the accused has elected trial by court-martial instead of being dealt with summarily by his commanding officer. (See Variation, p. 744.)

2. As to relevancy, see Ch. VI, paras. 15-30. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence, is relevant.

3. See r. 80 (n). The court should at once check a prosecutor if he infringes this rule, and should record upon the proceedings that they have done so.

4. *I.e.*, whether he gives evidence on oath or not.

5. *I.e.*, a liability to be cross-examined as to his previous character (r. 80 (n)) or to be charged subsequently with knowingly making a false accusation (A.A. 27 (1)). The court should always caution the accused as to the possible effect which will result from making imputations upon the character of witnesses for the prosecution.

**61.** Where two or more accused persons are tried together and any evidence as to the facts of the case, other than his own, is tendered by any one of them, the evidence and addresses on the part of or on behalf of all the accused persons will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the accused persons.<sup>1</sup>

Procedure on trial of accused persons together

1. The effect of this rule is that, if no evidence as to the facts of the case, other than their own, is called for the defence of two or more persons jointly charged and tried, the prosecutor's final address will precede that of the accused or their counsel or defending officer. If, however, any one of the accused calls witnesses as to the facts, the prosecutor will have a right of reply on the whole case. See also rr. 40 and 41, and note 3 to r. 16.

**62.—(A)** The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and where he so directs, the accused shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.<sup>1</sup>

Separate charge-sheets.

(b) The trials upon the several charge-sheets shall be in such order as the convening officer directs.<sup>2</sup>

(c) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 45 (A) and (B), and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 45 (c) to 50, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.<sup>3</sup>

(d) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by (c).<sup>4</sup>

(e) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such a case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.<sup>5</sup>

(f) If a plea of "Guilty" to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of Rules 37 (b) and (c) shall not be complied with until after the court have arrived at their findings on all the charge-sheets.<sup>6</sup>

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:—

- (a) Alternative charges must not be placed in different charge-sheets.
- (b) A series of offences forming part of one escapade should normally be placed in a single charge-sheet; *e.g.*, escape from confinement, followed by resistance to escort upon re-arrest, and wilful damage to a cell after re-committal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided, though in some cases it is necessary to allege a series of offences, *e.g.*, to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.
- (c) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; *e.g.*, a series of barrack room thefts from comrades during a short space of time.
- (d) Offences of different descriptions should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, *e.g.*, where a soldier is charged with desertion and with striking the serjeant of the guard, his superior officer, after he has been handed over by the escort, the charges should normally be inserted in separate charge-sheets. But if immediately before the alleged desertion, the accused made away with his army clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion. Again, if an officer is charged with fraudulent misapplication of regimental money of which he is in charge, and, in order to enable him to perpetrate the fraud, has knowingly made fraudulent entries in a book signed by him, charges under A.A. 17 and 25 should be inserted in the same charge-sheet.

Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under para. (x) of this rule has the right to apply for separate trial.

Where the accused is arraigned on separate charge-sheets, the court must arrive at their finding upon one charge-sheet before the next charge-sheet is proceeded with.

For form of proceedings, see para. 23 of memoranda on p. 769.

Where any evidence given upon the trial of a charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn again.

2. Generally speaking the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differs, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; and see para. (d) of this rule. Occasionally it may be desirable to direct that a charge which necessitates the calling of a large number of witnesses should be inserted in the first charge-sheet, so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

3. After the finding of the court upon all the charge-sheets has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until they have arrived at a finding on all the charge-sheets, and will then award one sentence in respect of them all. A finding of "not guilty" on any one or more charges in a charge-sheet (whether alternative or not) will be announced in open court (see r. 45).

4. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order to justify the award of a more severe sentence.

The powers given to the convening officer under this paragraph cannot be exercised by the prosecutor on his own initiative or by the court.

5. The court should always, unless they think the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

6. Under this paragraph, where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary or abstract of evidence relating thereto and any statement which he may make in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated in mitigation of punishment anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

63.—(A) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared<sup>1</sup> of all other persons not entitled to be present.

(B) Except as above-mentioned, all the proceedings, including the view<sup>2</sup> of any place, shall be in open court<sup>3</sup> and in the presence of the accused.

1. See A.A. 53 (5).

The proceedings will be invalidated if the prosecutor happens to be present when the court is closed, *c.f. R. v. Kettridge* L.R., (1915) 1 K.B. 467.

2. See A.A. 53 (7).

All the members of the court must be present at the "view" as must also the accused, even if he is represented at his trial by counsel or defending officer.

3. This does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings—a power which every court possesses as necessary for the proper conduct of its proceedings. A court-martial has inherent power to sit *in camera* if necessary for the proper administration of justice. (*R. v. Lewis Prison Governor*), L.R., (1917) 2 K.B. 254.)

64.—(A) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determine.<sup>1</sup>

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, but if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies<sup>2</sup> under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly,<sup>3</sup> but otherwise the court should not sit on any of those days.

1. See K.R. 646 and r. 65 and note.

2. This certificate should be attached to the proceedings.

3. A statement of the reason for sitting on these days should be attached to, or entered in, the proceedings.

65.—(A) When a court is assembled and the accused has been arraigned, the court should (but subject to the provisions of the Army Act,<sup>1</sup> and of these rules<sup>2</sup> as to adjournment) continue the trial from day to day and sit for a reasonable period<sup>3</sup> on every day<sup>4</sup> unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(b) A court-martial in the absence either of the president or judge-advocate<sup>5</sup> (if any) shall not proceed and if necessary shall adjourn.

(c) The senior officer on the spot may also, for military exigencies<sup>6</sup>, adjourn or prolong the adjournment of the court.

(d) Any adjournment may be made from place to place<sup>7</sup> as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which the adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

1. A.A. 53 (6) authorises an adjournment of the court without any restriction. It is, however, very important that a trial, once begun, should proceed without interruption to its conclusion: This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the Rules, an adjournment should be allowed for obtaining the opinion of the confirming authority or Judge-Advocate-General on any point of law or procedure, for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the judge-advocate to prepare his summing-up.

The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if they consider that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

The reasons for any adjournment must be entered in the proceedings (see Variations, pp. 749, 750, 752), and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

3. See K.R. 646 and r. 64 (A). Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused who should never be required to make his defence at the close of a prolonged sitting.

Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning. If a shorthand writer is in attendance, the exacting nature of his work should be taken into consideration by the court in their decision as to an adjournment.

4. But see r. 64 (D) as to Sunday, &c.

5. As to procedure on death of president or his inability to attend, see A.A. 53 (2). As to procedure on death of judge-advocate or his inability to attend, see r. 102. Where the absence of either the president or judge-advocate is due to temporary causes, the court should adjourn until he is able to attend.

As to the duties of the senior member of the court where the president is absent, see r. 66 (A).

6. These can seldom occur except on active service.

7. E.g., where a view under A.A. 53 (7) and r. 63 (B) is necessary, or where a court-martial is held on the line of march; or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

Suspension  
of trial.

66.—(A) Where, in consequence of anything arising while the court is sitting,<sup>1</sup> the court is unable by reason of dissolution<sup>2</sup> (as specified in Section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior<sup>3</sup> member present, will immediately report the facts to the convening authority.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

1. If the court is not sitting, a report will usually be made in some other way to the convening authority.

2. A court is dissolved if it is reduced below the legal minimum (see note 4 to r. 17 and note to r. 18); if, on the death, &c., of the president, the senior member of the court is not of sufficient rank; if continuance of trial is impossible through illness of the accused before the finding. (See A.A. 53 (1), (2), (3)).

3. *I.e.*, senior according to the rank in which they take their seats. (See r. 58.)

67. In case of the death of the accused or of such illness of the accused as renders it impossible to continue<sup>1</sup> the trial, the court will ascertain the fact of the death or illness by evidence,<sup>2</sup> and record the same, and adjourn, and transmit the proceedings to the convening authority.

Proceeding on death or illness of accused.

1. *I.e.*, within a reasonable time. See A.A. 53 (3).

2. This will be taken on oath or solemn declaration.

68.—(A) A member of a court-martial who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the court will not be affected except as provided by Section 53 of the Army Act.<sup>2</sup>

Presence throughout of all members of court.

(B) An officer cannot be added to a court-martial after the accused has been arraigned.

1. The principles of this rule must be applied in the case of a field general court-martial though the rule is not specifically applied by r. 121.

2. *I.e.*, through dissolution under A.A. 53.

69.—(A) Every member of a court-martial must give his opinion by word of mouth<sup>1</sup> on every matter which the court has to decide, including the sentence, notwithstanding that he may have given his opinion in favour of acquittal.

Taking of opinions of members of court.

(B) Subject to the provisions of the Army Act,<sup>2</sup> every question shall be determined by an absolute majority<sup>3</sup> of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.<sup>4</sup>

1. Opinions must be given orally. (See also r. 43 (a)).

2. The president has no second or casting vote (i) in the case of a sentence of death (A.A. 48 (8)); and (ii) where there is an equality of votes on the finding of the court (A.A. 53 (8)); (see also A.A. 49 (2)).

3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:—

At a general court-martial consisting of seven members, three give their votes in favour of a sentence of penal servitude, two in favour of imprisonment and two in favour of detention. The most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, *viz.*, imprisonment. All seven members must vote again and the two members who had previously voted in favour of detention will naturally give their votes for imprisonment rather than penal servitude. The result will be an absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

4. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned (see r. 43 (b)).

"Junior in rank" means junior in the rank in which they take their seats.

Procedure on  
incidental  
question.

70. If any objection<sup>1</sup> on any matter of law, evidence, or procedure is raised by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have the right of reply.

1. This rule will apply to such questions as the admissibility of evidence, the propriety of any question or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence. (See note 1 to r. 40.)

Swearing of  
court to try  
several  
accused  
persons.

71.—(A) A court may be sworn at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.<sup>1</sup>

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person, and swear the members of the court for the trial of the others alone.<sup>2</sup>

(C) In the case of several accused persons to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.<sup>3</sup>

(D) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if they consider it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.<sup>4</sup>

1. This course of procedure will not affect the position of the court which will be a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

2. When, in consequence of an objection raised by one of several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

3. *I.e.*, the finding and sentence (except where the court decides to act under para. (D) of this rule) must be arrived at before the next case is tried.

For form of proceedings, see para. 12 of memoranda on p. 768.

4. It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to, apportion the proper sentences to be awarded to all the accused persons.

Inasmuch as a sentence of penal servitude, imprisonment or detention will under A.A. 68 (1) commence upon the day upon which it is eventually signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of this paragraph.



**72.—(A)** At any time during the trial<sup>1</sup> an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn<sup>2</sup> to act as interpreter. Swearing of interpreter and shorthand writer.

(B) An impartial person may at any time during the trial, if the court think it desirable, be sworn<sup>2</sup> to act as a shorthand writer.

(C) Before a person is sworn as interpreter or shorthand writer the accused should be informed of the person who is proposed to be sworn, and may object<sup>3</sup> to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear that person as interpreter or shorthand writer.

1. An interpreter or shorthand writer is usually sworn at the commencement of the trial.

2. For form of oath or solemn declaration, see pp. 762-3.

For remarks on employment of interpreter, see Ch. V, para. 55.

3. The same procedure will be followed as in the case of an objection to a member of the court.

### *General Provisions as to Witnesses and Evidence.*

**73.—(A)** A court-martial shall not receive evidence for the prosecution which is not relevant<sup>1</sup> to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act,<sup>2</sup> or under any other Act of the Parliament of the United Kingdom. Evidence to be according to rules in English courts.

(B) The rules of evidence adopted in civil courts in England, including those contained in the Criminal Evidence Act, 1898, will be followed by courts-martial,<sup>3</sup> and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England.

(C) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

1. As to relevancy and admissibility of evidence, see generally Ch. VI.

2. See A.A. 163-165.

3. See A.A. 128. Under A.A. 127, it is provided that as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing whatsoever, a court-martial shall not be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom.

The Criminal Evidence Act, 1898, which first gave an accused person the right to give evidence on his own behalf in all criminal proceedings is, in accordance with s. 6 (2) (b) of that Act, applied to courts-martial by this rule. The main provisions of the Criminal Evidence Act, 1898, are reproduced in r. 80. (See notes to that rule.)

**74.** The court may take judicial notice<sup>1</sup> of all matters of judicial notoriety, including all matters within their general military notice.

1. As to meaning of judicial notice, see Ch. VI, paras. 10 and 11.

**75.** The prosecutor is not bound to call all the witnesses whose evidence is in the summary or abstract of evidence given to the accused,<sup>1</sup> but he should ordinarily call such of them who were Calling of all prosecutor's witnesses.

called for the prosecution as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.<sup>3</sup>

1. As to giving to the accused the summary or abstract of evidence, see r. 14 (b).

2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of the summary of evidence.

Calling of witness whose evidence is not contained in summary or abstract.

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of such intention shall be given to the accused a reasonable time before the witness is called, together with an abstract of his proposed evidence; and if the witness is called without such notice or abstract having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement.<sup>1</sup>

1. It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under r. 86 (d).

List of witnesses of accused.

77. The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided for by Rule 15 (A).<sup>1</sup>

1. A member of the court, the judge-advocate and prosecutor are competent witnesses for the defence, and may be sworn at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or to act as prosecutor or judge-advocate at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as judge-advocate at the trial of the case in which he is a witness. (See A.A. 50 (3)).

Procuring attendance of witnesses.

78.—(A) The commanding officer of the accused, the convening officer, or, after the assembly of the court, the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured,<sup>1</sup> but the person requiring the attendance of a witness may be required to undertake to defray the cost<sup>2</sup> (if any) of his attendance.<sup>3</sup>

(b) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, or, after the assembly of the court, the president or judge-advocate (if any).<sup>4</sup> The summons shall be in the form provided in the Second Appendix to these rules, and shall be served on the witness either personally or by leaving it with some person at his last or most usual place of abode.<sup>5</sup>

(c) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.<sup>6</sup>

1. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the

duty of the commanding or convening officer or, after the assembly of the court, the president to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and r. 79 makes provision for the adjournment of the court if the attendance of such witness is essential.

2. This power is given in order to prevent an unreasonable demand by prosecutors or accused persons for the attendance of witnesses. In the case of the prosecutor the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

As to expenses of witnesses, see generally Allowance Regulations.

3. As to the mode of applying for the attendance of military and naval witnesses from distant stations, see K.R. 637.

4. See A.A. 125.

5. For form of summons, see p. 761.

A civilian witness who, after being duly summoned to attend a court-martial or summary of evidence and after payment or tender of the reasonable expenses of his attendance, makes default in attending, may be punished by a civil court. (See A.A. 126, 180 (1)). It is essential that the summons be served by a person of sufficient standing to give satisfactory evidence of service having been effected, and a warrant officer or N.C.O. not below the rank of serjeant should, as a rule, be detailed for this duty. Where any difficulty is experienced in serving a summons upon a civilian witness, the assistance of the civil police should be invoked.

If a civilian witness who has been duly summoned and whose expenses have been tendered does not attend, the court should take evidence on oath as to the service of the summons and the tender of expenses. The president should then forward a certificate through the convening officer to the Army Council reciting the facts and attaching a certified copy of the evidence relating to the service of the summons and the tender of expenses.

A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom, nor, if in the United Kingdom, can he be compelled to attend a court-martial abroad.

If a civilian witness has in his possession or under his control any books, accounts, letters, returns, papers or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere verbal request.

A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. (See A.A. 125 (2)).

6. Disobedience to any such order is punishable under A.A. 28 (1).

79. If such proper steps as are mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not reasonably be procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer.

Adjournment of court for non-attendance of witnesses.

80.<sup>1</sup>—(A) An accused person or his wife is a competent witness for the defence at any stage of the proceedings at which under these rules<sup>2</sup> evidence for the defence may be given whether the accused is charged solely or jointly with any other person, but neither the accused nor his wife shall, save as provided in section 4 of the Criminal Evidence Act, 1898, be called as a witness, except on the application of the accused.<sup>3</sup>

Evidence of accused and his wife.

(B) The failure of the accused or his wife to give evidence shall not be made the subject of any comment by the prosecutor.<sup>4</sup>

(c) The accused when giving evidence shall, unless otherwise ordered by the court,<sup>5</sup> give his evidence from the witness box or other place from which the other witnesses give their evidence.<sup>6</sup>

(d) The accused when giving evidence may be asked any question in cross-examination,<sup>7</sup> notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged<sup>8</sup>; or
- (ii) he has personally or by his counsel or defending officer asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution<sup>9</sup>; or
- (iii) he has given evidence against any other person charged with the same offence.<sup>10</sup>

(e) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage, nor shall an accused person be compelled to disclose any communication made to him by his wife during the marriage.

(f) Where the only witness to the facts of the case called by the defence is the accused, he shall give evidence immediately after the close of the evidence for the prosecution.<sup>11</sup>

1. This rule sets out all the relevant provisions of the Criminal Evidence Act, 1898, which is applied to the proceedings of courts-martial by r. 73 (a).

2. See rr. 40 and 41.

3. As to the duty of the president or judge-advocate to explain to the accused the effect of giving evidence on oath, see note 2 to r. 40.

The wife of an accused person cannot be called as a witness for the prosecution except in certain cases mentioned in s. 4 of the Criminal Evidence Act, 1898, e.g., where the accused is charged with a civil offence under the Criminal Law Amendment Act, 1885, or where the charge is one involving personal injury to the wife. The wife of an accused person can only be called as a witness for the defence upon the application of the accused. (See Ch. VI, para. 87.)

4. As to the duty of the court, see r. 60 (a) and note 3 thereto.

5. E.g., if the accused is violent.

6. The accused will remain under escort while giving evidence, but should otherwise be treated like any other witness.

7. If the accused refuses to answer a question which another witness would be required to answer, and the question is not one which an accused person is under this rule specially exempted from answering, he may be charged, like any other witness, under A.A. 28 (4).

8. See generally Ch. VI, para. 20, *et seq.*

If, in answer to a charge of breaking out of barracks at 11 p.m., the accused stated in evidence that he was in barracks from 10 p.m. until after reveille the following morning, he could properly be asked in cross-examination whether he had not in fact been convicted of an assault upon the police outside barracks at midnight.

9. It will be for the court to decide whether or not the accused has done anything to render himself liable to be cross-examined as to character under this provision. If there is any doubt on the matter, the decision of the court should be in favour of the accused.

If the accused suggests in cross-examination of a witness for the prosecution or in his own evidence upon oath that such witness himself committed the offence charged against him (the accused), the nature of the defence involves imputations upon the character of the witness, and the accused is liable if he gives evidence to be cross-examined as to his own character. If the matters suggested as involving imputations on the character of the witness for the prosecution are isolated and do not form a substantial part of the defence, cross-examination as to character should not be permitted unless it is suggested by the defence that the witness ought not to be believed on the ground that his conduct (not his evidence in the case but his conduct outside the evidence given by him) makes him an unreliable witness.

Evidence by the accused that his superior officer whose command he was charged with disobeying had a hasty temper would not be an imputation upon the character of such superior officer within the meaning of this rule.

If an accused person is conducting his case in a manner which renders him liable to be cross-examined as to his character, the court should warn him of the possible consequences.

The prosecutor in his cross-examination of the accused must not put questions designed to draw from the accused imputations upon the character of a witness for the prosecution.

10. If two accused persons are tried jointly, and one of them in giving evidence on his own behalf incriminates the other, the latter may, under this provision, cross-examine the former.

11. See also r. 40 (c) (i).

81. During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination,<sup>1</sup> and if while he is under examination a discussion arises as to the allowance of a question or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.<sup>2</sup>

Withdrawal  
of witnesses  
from court.

1. It is customary to have all witnesses present in court while the members of the court are being sworn, but they should withdraw before the arraignment. This does not, of course, apply to the prosecutor if a witness.

Permission to remain in court while not under examination may reasonably be given, e.g., to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

2. Otherwise his answer might be influenced by the discussion.

82.—(A) An oath shall be administered by the judge-advocate (if any) or by the president or by a member of the court and taken in presence of the accused by every witness in the form and manner provided in the Second Appendix to these rules.<sup>1</sup>

Swearing of  
witnesses.

(B) Rule 30 shall apply to every witness.

(C) Where a witness is permitted to make a solemn declaration<sup>2</sup> instead of taking the oath in the prescribed form and manner, the declaration shall be in the form provided in the Second Appendix to these rules.

1. See A.A. 52 (3).

For form of oath and manner of taking same, see pp. 762-3.

As to power of dealing with recalcitrant witnesses, see A.A. 28 (in the case of persons subject to military law) and s. 126 (in other cases).

2. See A.A. 52 (4). For form of declaration, see p. 763.

83.—(A) Every question will be put to a witness orally by the prosecutor, by or on behalf of accused, or by the judge-advocate, without the intervention of the court, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or by or on behalf of the accused, in which case he will not reply until the objection is disposed of.<sup>1</sup>

Mode of  
questioning  
witnesses.

(B) The evidence of a witness as taken down should be read to him<sup>2</sup> after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

(c) In the case of a court-martial at which a shorthand writer is employed, it shall not be necessary to comply with Rule 83 (B), if in the opinion of the court and the judge-advocate (if any) (such opinion to be recorded in the proceedings) it is unnecessary to do so, but nevertheless, if any witness so desires, Rule 83 (B) shall be complied with.<sup>3</sup>

1. The court and judge-advocate must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies if, in their opinion, any question is improper or "leading." (See Ch. VI, para. 106, *et seq.*) If either the prosecutor or the accused or the officer or counsel representing him considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given. This should always be done where it is proposed to cross-examine the accused as to his character.

2. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence and not by way of interlineation or erasure.

3. Any particular portions of the evidence may be read over at any time before the sentence is awarded, if the court, judge-advocate, prosecutor or accused so desires. The court, if closed at the time, must be re-opened for this purpose.

(Form of proceedings, pp. 748-751.)

Examination  
and cross-  
examination.

**84.**—(A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination.<sup>1</sup>

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.<sup>2</sup>

1. See Ch. VI, paras. 106-118.

As to re-examination, see Ch. VI, para. 119. It is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination by the accused under r. 75.

2. The court should, if the accused so requests, allow the cross-examination of a witness to be postponed, especially if his evidence comes as "a surprise"; see also r. 76 where a witness is called whose evidence is not contained in the summary or abstract of evidence. A request for postponement should not be accepted to, if, in the opinion of the court, it is made for purposes of obstruction.

Questions to  
witness by  
members of  
court or  
judge-  
advocate.

**85.**—(A) The president, the judge-advocate (if any) and, with permission of the court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.<sup>1</sup>

(B) Upon any such question being answered, the president or judge-advocate (if any) shall also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.<sup>2</sup>

1. It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. (As to recalled witnesses see r. 86.)

It is desirable that any questions put by the president, judge-advocate, or members of the court should be put after the conclusion of the examination, cross-examination and re-examination (if any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

2. The president or judge-advocate should always, under the provisions of this rule, put any question which they are requested by the prosecutor or by or on behalf of the accused to put and which does not seem unreasonable. It is to be noted that members of the court other than the president are not empowered, in the circumstances mentioned in this paragraph, to put questions.

86.—(A) At the request of the prosecutor or of the accused a witness may, by leave of the court, be re-called at any time before the closing address<sup>1</sup> of or on behalf of the accused for the purpose of having any question put to him through the president, or judge-advocate (if any).<sup>2</sup>

Recalling of witnesses, and calling of witnesses in reply.

(B) The court may, if they consider it expedient, in the interests of justice, so to do, allow a witness to be called or re-called by the prosecutor before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence<sup>3</sup> or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the accused has called witnesses as to character, the prosecutor before the closing address of or on behalf of the accused may call or re-call witnesses for the purpose of proving a previous conviction or entries in the conduct book against the accused.

(D) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary in the interests of justice.<sup>4</sup>

1. See rr. 40 and 41.

2. The president or judge-advocate should also put to a witness recalled under the provisions of this paragraph any further questions which they consider necessary in view of the answer given.

3. Including a material statement by the accused himself if he has given evidence.

As stated in Ch. VI, para. 20, *et seq.*, evidence of the accused having committed other offences is not usually admissible, except to rebut certain lines of defence (e.g., intent, accident, mistake, &c.), and should not be given (or mentioned by the prosecutor in his opening address) until a line of defence justifying its admission has been definitely adopted. Where the accused in his defence does adopt such a line, evidence of the nature referred to may be admitted under this rule in rebuttal.

4. The power given under this provision of calling or recalling a witness should only be exercised in exceptional circumstances; e.g., where it appears for the first time from the evidence given at the trial that a person who has not been called either by the prosecutor or on behalf of the defence was present at, and probably witnessed, the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elucidated (if any).

*Defending Officer, Friend of Accused, and Counsel.*

Defending  
officer and  
friend of  
accused.

87.—(A) If an accused person is not represented at his trial by counsel, he may be represented by any officer subject to military law who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused."<sup>1</sup>

(B)<sup>2</sup> It shall be the duty of the convening officer to ascertain whether an accused person not otherwise represented desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer.<sup>3</sup> If, owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer be no such officer available for the purpose, the convening officer shall give a written notice to the president of the court-martial, and such notice shall be attached to the proceedings.

(c) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.<sup>4</sup>

(d) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he cannot examine or cross-examine the witnesses or address the court.

1. Under r. 14 (A) the accused, after he has been ordered to be tried by court-martial, is to be allowed free communication with his "friend," defending officer, or legal adviser.

2. There is power under r. 104 to dispense with this paragraph in the event of military exigencies, &c.

3. Every effort should be made to secure the services of a competent officer, and he should be allowed time and opportunity for properly preparing the defence of the accused.

4. *I.e.*, he must *conduct* the case as representing the accused. (See rr. 89 (c), 91, 92.)

(Form of proceedings, p. 742.)

Counsel  
allowed in  
certain  
courts-  
martial.

88.—(A) Subject to these rules, counsel<sup>1</sup> shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial:

- (i) When held in the United Kingdom; and
- (ii) When held elsewhere than in the United Kingdom or India, if the Army Council or the convening officer, and when held in India, if the Commander-in-Chief of the forces in India, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such a declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 87, the rules with respect to counsel will apply only to the courts-martial at which counsel are, under this rule, allowed to appear.

1. For qualifications of counsel, see r. 93.

There is no restriction as to the number of counsel engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the



prosecutor, must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused (see r. 60 (c)); but he should exercise more restraint in commenting on the acts of persons not before the court.

**89.**—(A) An accused person intending to be represented by counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain counsel on behalf of the prosecutor<sup>1</sup> at the trial.

Requirements for appearance of counsel.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to represent him at the trial.

(C) The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to offer any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rules 40 (D) (ii) (a) and 41 (B) (ii) (a) or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined, cross-examined and re-examined as any other witness.

1. As to engagement of counsel on behalf of the prosecutor, see K.R. 640, 641.

**90.**—(A) Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

Counsel for prosecutor.

(B) Counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 60 (B).

**91.**—(A) Counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in Rule 60 (c) in the case of the accused.

Counsel for accused.

(B) If the court ask counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

**92.**—(A) Counsel, whether appearing on behalf of the prosecutor or of the accused, will conform strictly to these rules and to

General rules as to counsel.

the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If counsel puts to a witness other than the accused<sup>1</sup> a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it ; and

- (i) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question ; but
- (ii) If they are of opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the matter.

(C) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

(D) Counsel will not state what is his own opinion as to any matter of fact before the court.

(E) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(F) Counsel will treat the court and judge-advocate with due respect,<sup>2</sup> and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

1. If such a question is put to the accused, the court will also have to consider whether, having regard to r. 80, he should be compelled to answer it. (See also note 1 to r. 83.)

2. As to conduct of counsel, see A.A. 129.

Qualifica-  
tion of  
counsel.

93.—(A) Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified.

(B) Counsel shall be deemed properly qualified to appear at a court-martial wherever held<sup>1</sup>—

- (i) If in England or Northern Ireland he is a barrister-at-law or solicitor.
- (ii) If in Scotland he is an advocate or law agent.
- (iii) If in India he is a barrister-at-law or is a legal practitioner authorised to practise, with right of audience, in a court of sessions.
- (iv) If in any other part of His Majesty's dominions he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

1. The effect of this provision is that counsel properly qualified under this rule may appear for the accused person wherever the trial is held, *e.g.*, a Scottish advocate may appear for the defence at a court-martial held at Aldershot, or a solicitor from Northern Ireland at a court-martial held at Edinburgh.

*Proceedings.*

**94.** At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court,<sup>1</sup> and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

Record in proceedings of transactions of court-martial.

1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand. Interlineations or corrections must be avoided as much as possible; it made they should be initialled by the president. The pages should be numbered and the various sheets fastened together. Sufficient space must be left below the signature of the president for the decision of the confirming officer. The place and date of the signing of the sentence by the president must be inserted.

(See memoranda for guidance of courts-martial, paras. 11-29, pp. 768-770.)  
As to annexure to the proceedings of original documents, see K.R. 650.

**95.—(A)** The evidence shall be taken down in a narrative form<sup>1</sup> in as nearly as possible the words used; but in any case where the prosecutor, the accused, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.<sup>2</sup>

Taking down of evidence and addresses.

(B) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests, or the court think fit, be entered upon the proceedings together with the grounds of the objection, and the decision of the court thereon.

(C) Where any address by or on behalf of the prosecutor or accused, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the address or summing up in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

- (i) The court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by or on behalf of the accused to each charge against him; and
- (ii) The court should also record any particular matters in the address by or on behalf of the prosecutor or accused which the prosecutor or accused, as the case may be, requires.

(D) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.<sup>3</sup>

1. *I.e.*, the material effect of the question and answer will be written down; *e.g.*, where the question is "What did the accused do next?" and the answer is "He left the room"; the evidence as recorded would read "The accused then left the room."

If a shorthand writer is employed the evidence is usually taken down *verbatim* by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted into English will be recorded.

2. This applies to questions and answers given in cross-examination and re-examination as well as in examination-in-chief.

3. Cases justifying an expression of censure on individuals who are not present at the trial are rare and exceptional.

Custody and inspection of proceedings.

96. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and accused respectively, at all reasonable times before the court is closed to consider the finding.

Transmission of proceedings after finding.

97.—(A) Where the court is a general court-martial the proceedings shall as soon as possible be sent by the person having the custody thereof<sup>1</sup>, to such person as may be from time to time directed by His Majesty, and subject to the provisions of any such direction of His Majesty, as may be directed by the order convening the court.<sup>2</sup>

(B) Where the court is a district court-martial, the proceedings shall as soon as possible be sent by the person having the custody thereof<sup>1</sup>, to such person as may be directed by the order convening the court, or in default of any such direction to the confirming officer.<sup>3</sup>

1. See r. 96.

2. See K.R. 667.

Where the accused belongs to the Royal Marines, see K.R. 673.

3. For procedure where a member of the court has become confirming officer, see A.A. 54 (4).

Preservation of proceedings.

98.—(A) The proceedings of a court-martial shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.<sup>1</sup>

(B) In the case of the proceedings of a court-martial held upon an officer or soldier of a force raised in a Dominion, in the custody of the Judge-Advocate-General, such proceedings may be delivered by the Judge-Advocate-General into the custody of such person as may be appointed by the Governor-General or Governor of the Dominion concerned.

1. See K.R. 667, 669–672.

Rate of payment for copies of proceedings.

99. The rate<sup>1</sup> at which copies of the proceedings of a court-martial shall be supplied shall be the actual cost of the copy required, not exceeding two pence for every folio of seventy-two words; and the officer or person having the custody<sup>2</sup> of those proceedings must, on demand made within the time limited for the preservation of the proceedings, supply a copy accordingly to any person entitled under the Army Act to obtain such copy.

1. Prescribed for the purposes of A.A. 124 (see note to that section).

2. See r. 98.

Loss of proceedings.

100.—(A) If, before confirmation,<sup>1</sup> the original proceedings<sup>2</sup> of a court-martial, or any part thereof, are lost, a copy thereof,

if any, certified by the president of or the judge-advocate at the court-martial may be accepted in lieu of the original.

(b) If there is no such copy and sufficient evidence<sup>3</sup> of the charge, finding, sentence and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings or part thereof lost.

(c) In any case above in this rule mentioned the finding, if it is a finding which requires confirmation, and the sentence consequent thereon, may be confirmed, and shall be as valid as if the original proceedings or part thereof had not been lost.

(d) If the accused refuses his assent as required in (b), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be null.

(e) If, after confirmation, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

1. Confirmation is not complete until finding and sentence have been promulgated. (Sec r. 53.)

2. See note 2 to r. 50.

As to annexure to the proceedings of original documents, see K.R. 650.

3. This may be obtained by the president or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured, if possible.

As soon as it is known that the proceedings have been lost, steps should be taken to obtain and preserve the best evidence available.

### *Judge-Advocate.*

**101.—(A)** Where the convening officer is authorised<sup>1</sup> to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district, court-martial, by order appoint a fit person to act as judge-advocate at the court-martial.

Appoint-  
ment of  
judge-  
advocate  
and dis-  
qualification.

(b) An officer who is disqualified<sup>2</sup> for serving on a court-martial shall be disqualified for acting as judge-advocate at that court-martial.

(c) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person<sup>3</sup> has been appointed; but this rule shall not relieve from responsibility the person who made the invalid appointment.

1. *I.e.*, by the warrant authorising him to convene a court-martial. As in the case of a general court-martial held in the United Kingdom, the warrant to the convening officer does not give him power to appoint a judge-advocate, application must be made to the Judge-Advocate-General to make the appointment. Omission to appoint a judge-advocate at a general court-martial will invalidate the proceedings.

As to the appointment of a judge-advocate in the case of a field general court-martial, see r. 106 (z).

2. See r. 19 (b) and notes.

A prosecutor or a witness for the prosecution is disqualified from acting as judge-advocate. (See A.A. 50 (3)).

3. A judge-advocate should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and a knowledge of the general principles of law and of the rules of evidence.

Death, illness, or absence of judge-advocate.

102. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and in the case of death, or, if in any other case the convening officer is of opinion that it is inexpedient to delay the continuance of the trial the court shall be dissolved and the accused may be tried again before another court.<sup>1</sup>

1. The court will in no circumstances proceed in the absence of a judge-advocate who has been duly appointed.

Powers and duties of judge-advocate.

103. The powers and duties of a judge-advocate are as follows:—

- (a) The prosecutor and the accused respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law or procedure relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court;
- (b) At a court-martial he represents the Judge-Advocate-General;
- (c) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court;
- (d) Any information or advice given to the court on any matter before the court will, if he or the court desire it, be entered in the proceedings;
- (e) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and advise the court upon the law relating to the case before the court proceed to deliberate upon their finding;<sup>1</sup>
- (f) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not disregard it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion;<sup>2</sup>
- (g) The judge-advocate has, equally with the president,<sup>3</sup> the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise, and may, for that purpose, advise the court<sup>4</sup> that witnesses should be called or re-called for the purpose of being questioned by him on any matters which appear to be necessary or desirable for the purpose of eliciting the truth;

(h) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

1. See r. 42 and note.

2. If a court-martial acting without jurisdiction or in excess of jurisdiction convict an officer or soldier, the members of the court may be held liable in damages by a civil court (see Ch. VIII, para. 30). Such liability—or at least the quantum of the damages—may depend upon the question whether they exercised a bona fide judgment, and the fact that they accepted the advice of the judge-advocate, even if such advice was held to be wrong, might practically exonerate the members from liability.

3. For duty of president, see r. 59 (s) and note.

4. This advice should always be acted upon unless the court consider that the judge-advocate is acting improperly or in such a manner as to obstruct the proceedings. If his advice is disregarded the court should record their reason for disregarding it.

### *Exception from Rules.*

104. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the Rules 4 (c), (d), (e), (f), and (g), 5, 8, 14, 15, and 87 (b), he may, by order under his hand, make a declaration<sup>1</sup> to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in the declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.<sup>2</sup>

*Suspension of rules on the ground of military exigencies or the necessities of discipline*

Provided that the accused shall have full opportunity of making his defence,<sup>3</sup> and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

1. For form of declaration, see p. 741.

2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to resort to it in the case of embarkation or on the line of march, or possibly in an extreme case where the necessities of discipline require speedy trial and punishment.

In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, e.g., it may be expedient to comply with the relevant provisions of r. 4 but not with r. 5.

If rr. 4 (c), (d), (e), (f) and (g) are suspended, steps must be taken to inform the accused beforehand of the nature of the charge, the names of the witnesses and the effect of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having received a summary of evidence.

The power of dispensing with r. 14 (a) is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend upon the spot.

R. 15 (c) should always be complied with, and r. 15 (a) and (b), if not complied with within the time therein mentioned, should be complied with as long as possible before the court assembles.

3. The accused will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

*Field General Court-Martial.*

The foregoing rules shall not, save as hereinafter mentioned,<sup>1</sup> apply to field general courts-martial, which shall be subject to the following rules:—

Convening  
of field  
general  
court-  
martial.

**105.—(A)** A field general court-martial<sup>2</sup> may be convened—

(i) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in that country: or

(ii) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in His Majesty's dominions unless he is authorised so to do by the general officer or brigadier commanding the forces to which the officer belongs.

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable<sup>3</sup> to try the person by an ordinary court-martial, and—where the officer is below the rank of field officer and is not a commanding officer—be further satisfied that it is not practicable to delay the trial for reference to a superior officer.

1. See rr. 108, 110 (a), 111, 116 and 121.

2. See generally as to field general courts-martial, A.A. 49 and Ch. V, paras. 111–113.

The order convening a field general court-martial must be signed by the convening officer personally and not by a staff officer on his behalf. For form of convening order, see pp. 737–740.

The court should not, as a rule, be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered.

Subject to the restrictions imposed by A.A. 49 and by this rule, a field general court-martial can try any offence. (See A.A. 49 (3)).

A field general court-martial can try an officer.

A judge-advocate may be appointed at a field general court-martial. (See r. 106 (x)).

3. For meaning of “practicable,” see r. 122 (A).

Composition  
of field  
general  
court-  
martial.

**106.—(A)** Subject to the provisions of Rule 107 (A), not less than three officers must be appointed.<sup>1</sup>

(B) If the convening officer is of opinion that three other officers are not available<sup>2</sup> to form the court, he may appoint himself president of the court; but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as president some other officer:



**Provided that the convening officer—**

- (i) Must not appoint as president any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a field officer is not available<sup>3</sup>; and
- (ii) Where under the foregoing provision he has power to appoint as president an officer below the rank of field officer, must not appoint an officer below the rank of captain, unless in his opinion a captain is not available.

(c) The officers should have held commissions for not less than one year,<sup>4</sup> and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(d) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

(e) The convening officer, although not authorised to appoint a judge-advocate in the case of other courts-martial, may in the case of any field general court-martial by order appoint a fit person to act as judge-advocate thereat.

1. This paragraph gives the ordinary rule for the constitution of a field general court-martial, which may, however, in the circumstances mentioned in A.A. 49 (1) (b) and r. 107, consist of two officers.

2. For meaning of "available," see r. 122 (A).

3. By A.A. 49 (1) (c), the president of a field general court-martial may be of any rank, and in some circumstances it may be the duty of the convening officer to follow the statute and disregard this rule. For instance, a court consisting of a major as president and two captains heard all the evidence and were agreed upon their findings of fact, but adjourned to obtain advice upon a point of law. In the interval the president was killed. Another field officer was available, but as the witnesses were no longer available, it was not possible to re-try the case before a new court. It was ruled that the convening officer ought to act in accordance with A.A. 49 (1) (c) and 53 (2) and appoint the senior captain as president, so that the court might conclude the trial.

4. If an officer of less than one year's standing is appointed, the necessity for so doing should be recorded.

**107.—(A)** Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 106, and that it is not practicable to delay the trial for the purpose of such compliance, then if, in his opinion, three officers are not available,<sup>1</sup> two will be appointed.

As to field general court-martial where military exigencies occur.

(B) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules<sup>2</sup>; but if it appears to the convening officer that military exigencies or other circumstances<sup>3</sup> prevent the use of that form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(c) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the accused, the military exigencies or other circumstances which prevented compliance with Rule 106, or the use of the form in the Second Appendix.

1. For meaning of "practicable" and "available," see r. 122 (A).

2. See pp. 737-740.

3. Before resorting to the exceptional courses allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it.

The accused must always have full opportunity for making his defence; see r. 115.

#### Charge.

108. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act. No formal charge-sheet shall be necessary, but the convening officer may nevertheless direct the separate trial of two or more charges preferred against an accused; or the accused, before pleading, may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accede to his application unless they think it to be unreasonable. If such charges are separately tried, the provisions of Rule 62 shall apply as if the field general court-martial were a district court-martial.

#### Trial of several accused persons.

109. The court may be sworn at one time to try any number of accused persons then present before it, but except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate.

#### Challenge.

110.—(A) The names of the president and members of the court will be read over in the hearing of the accused persons, and they will be asked if any of them objects to be tried by any of those officers.

(B) If any accused person objects to an officer, the objection will be dealt with in the manner provided in Rule 25, which shall apply to every field general court-martial.

#### Swearing of members, witnesses, &c.

111. The provisions of the foregoing Rules 26 to 30 (inclusive) and Rule 82 relating to the administering and taking of oaths and the making of solemn declarations shall apply to every field general court-martial.<sup>1</sup>

1. For forms of oaths and declarations, see App. II, pp. 762-3.

#### Arraignment.

112. When the court are sworn, the judge-advocate (if any) or the president will state to the accused then to be tried the offence with which he is charged,<sup>1</sup> with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the accused whether he is guilty or not of the offence.<sup>2</sup>

1. As to objection by accused to charge, see r. 32 which, by r. 121, is applied, so far as practicable, to a field general court-martial. As to responsibility of president, see r. 59.

2. As to general plea of "guilty" or "not guilty," see r. 35 and notes: as to procedure after plea of "guilty," see r. 37. Both of these rules are, by r. 121, applied, so far as practicable, to a field general court-martial.

A plea of "guilty" will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced to death. If such plea is offered, the court will enter a plea of "not guilty" and proceed with the trial accordingly. See r. 35 (d) which in all cases will be applied to a field general court-martial.

113. If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.<sup>1</sup> Plea to jurisdiction.

1. See r. 34 (which by r. 121 is applied, so far as practicable, to a field general court-martial) and notes.

114.—(A) The witnesses for the prosecution will be called, and the accused will be allowed to cross-examine them, and to call any available witnesses for his defence.<sup>1</sup> Witnesses and evidence.

(B) The judge-advocate, if there be one, or if there be none, the president of the court shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary so taken down shall be attached to the proceedings;

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, the trial may be carried on without any summary being taken down, but in every such case the convening officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (c).

1. Although by r. 121 only a limited number of the foregoing rules are applied, so far as practicable, to field general courts-martial, the procedure to be adopted at a field general court-martial should be the same as at a general or district court-martial. See also r. 116.

As to evidence, see r. 73.

115. The accused will be asked what he has to say in his defence, and shall be allowed to make his defence.<sup>1</sup> Defence.

1. See note to r. 114.

As to the rights of the accused to prepare his defence, see r. 14, which by r. 121 applies, so far as practicable, to a field general court-martial.

116. Where during the course of a trial any doubt arises as to the procedure to be followed in connection with the calling or recalling or questioning of witnesses, or the order in which such witnesses are to be examined and addresses are to be made by the prosecutor or by or on behalf of the accused, the provisions of the foregoing rules<sup>1</sup> relating thereto shall, so far as practicable, apply as if the field general court-martial were a district court-martial.<sup>2</sup> Procedure at trial.

1. See rr. 39, 40, 41, 83-86.

2. As to the presence throughout of all members of the court, see note 1 to r. 68.

117.—(A) In the case of an equality of opinions on the finding the accused will be acquitted. Acquittal.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against an accused person, will

be declared at the time of the finding, and the accused will thereupon be released from custody. If it relates to one or more, but not all, of the charges, it will be announced at once in open court.

**Sentence.**

**118.—(A)** The court, if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death,<sup>1</sup> the whole court must concur.

**(B)** The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding field punishment,<sup>2</sup> or two years' imprisonment with hard labour.

**(C)** Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence.<sup>3</sup>

1. See A.A. 49 (2). As to communication to accused persons upon whom sentence of death has been passed, see note (b) to forms of oath in App. II, p. 762.

2. See Field Punishment Rules, p. 787.

3. As to promulgation, see r. 53.

**General provisions as to votes and powers of court.**

**119.—(A)** Except as provided by Rules 110 (B), 117, and 118, every question will be determined by the majority of opinions, and in case of equality, the president shall have a second or casting vote.

**(B)** If, after the commencement of the trial, the court consider that any accused person named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that person out of the schedule.

**(C)** The proceedings shall be held in open court,<sup>1</sup> in the presence of the accused, except on any deliberation among the members, and the judge-advocate (if any), when the court may be closed.

**(D)** The court may adjourn from time to time, and may, if necessary, view any place.

1. As to sitting *in camera*, see note 3 to r. 63.

**Confirmation.**

**120.—(A)** Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as they are confirmed by proper military authority.<sup>1</sup>

**(B)** The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court.<sup>2</sup>

**(C)** A prosecutor of an accused person or a member of the court trying an accused person cannot confirm the finding or sentence of the court as regards that person, except that if a member of the court trying an accused person would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable<sup>3</sup> to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

**(D)** In any case where a sentence of death, penal servitude, imprisonment, or detention, is passed, the confirming authority shall after confirmation forthwith transmit the proceedings to the officer in chief command of the forces in the field comprising the force with which the accused is present, and a sentence of death or penal servitude shall not be carried into effect pending the decision of that officer on the case:—

Provided that—

- (i) The confirming officer shall not be required to refer any case to the officer in chief command in the field if in confirming the sentence he commutes it so as to make it a punishment less than detention; and
  - (ii) Where the confirming officer is of opinion that, by reason of the nature of the country, the great distance, or the operations of the enemy, it is not practicable<sup>3</sup> to delay the case for the purpose of referring it to the officer in chief command in the field, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of the sentence.
- (x) Subject to the preceding provisions of this rule, the finding and sentence of a field general court-martial as regards any person may be confirmed—
- (i) Where the court was convened by an officer in command of a detachment or portion of any troops not on active service, by an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops form part; and
  - (ii) Where the court was convened by an officer in command of any troops on active service, by the senior officer,<sup>4</sup> not being an officer below the rank of field officer, present at the place where the trial takes place, or if there is no officer not below that rank present at that place, by the senior officer not below the rank of field officer present at any other place.
- (F) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority.
- (G) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence.<sup>5</sup>

1. This is the same provision as is enacted in A.A. 54 (6) for ordinary courts-martial. (See note to that section and Ch. V, para. 87.)

2. The general effect of paras. (a) to (x) is as follows:—The finding and sentence of a field general court-martial will, when troops are not on active service, be confirmed by an officer authorised to confirm general courts-martial. If troops are on active service, the senior officer on the spot, if of field rank, or, if not of that rank, the nearest available senior officer of that rank will confirm.

If the sentence is one of detention or upwards, it must, after confirmation, be referred to the general in chief command in the field; and a sentence of death or penal servitude must not be carried out pending his decision. But if communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present.

Paras. (a) and (c) give effect to the ordinary rule that a prosecutor or member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant, as if he were the prosecutor.

3. See r. 122 (A).

4. "Senior" means senior in relation to command. It does not include a senior officer who holds no command, but is on the spot performing duties of, for example, a quasi civil character.

5. This applies the law enacted for ordinary courts-martial by A.A. 54 (2).

Application  
of rules.

**121.** The foregoing rules—3 (Hearing of charge), 4 (Disposal of the charge or adjournment for taking down the summary of evidence), 5 (Remand of accused), 8 (Procedure on charge against officer), 14 (Rights of accused to prepare defence), 15 (Information of charge and delivery of list of officers to accused), 32 (Objection by accused to charge), 34 (Special plea to the jurisdiction), 35 (General plea of "guilty" or "not guilty"), 36 (Plea in bar), 37 (Procedure after plea of "guilty"), 39 (A) (Application for adjournment), 43 (Consideration of finding), 44 (Form and record of finding), 46 (Procedure on conviction), 53 (Promulgation), 54 (Mitigation of sentence on partial confirmation), 55 (Confirmation notwithstanding informality in or excess of punishment), 56 (Confirmation notwithstanding technical or other deviation), 59 (Responsibility of president), 60 (Power of court over address of prosecutor and accused), 73 (Evidence to be according to rules in English Courts), 74 (Judicial notice), 80 (Evidence of accused and his wife), 87 (Defending officer and friend of accused), 97 (Transmission of proceedings after finding), 98 (Preservation of proceedings), 99 (Rate of payment for copies of proceedings), 100 (Loss of proceedings), 101 to 103 (Judge-advocate), and 104 (Suspension of rules on the ground of military exigencies or the necessities of discipline)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial.<sup>1</sup>

1. See also rr. 108, 110 (b), 111 and 116.

Definitions.

**122.**—(A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions "practicable" and "available" mean respectively practicable and available, having due regard to the public service.

(B) The expression "commanding officer<sup>1</sup> of a corps or portion of a corps" means the officer whose duty it is under the provisions of His Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to the corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority or to refer it to superior authority.

1. See note to r. 129.

Evidence of  
opinion of  
convening  
and confirm-  
ing officer.

**123.** Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming officer, shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

PART II.—MISCELLANEOUS.

*Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act.*

124.—(A) A court of inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.<sup>1</sup> Courts of inquiry.

(B) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops, whether belonging to one or more corps.

(C) The court may be composed of any number<sup>a</sup> of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(D) The court will be guided by the written instructions of the authority who assembled the court. The instructions will be full and specific, and will state the general character of the information required. They will also state whether a report is required or not.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F) Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation.

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on recovered prisoners of war, and in any other case in which the authority who assembled the court has so directed, the evidence will be taken on oath, in which case the court will administer the same oath or solemn declaration to witnesses as if the court were a court-martial.

The authority who assembled the court will, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the officer or soldier concerned was taken prisoner by reason of the chances of war, or through neglect or misconduct on his part, and the authority who assembled the court will record his own opinion. In other cases the court will give no opinion on the conduct of any officer or soldier unless so directed by the authority who assembled the court.

(I) The members of the court will not themselves be sworn, but when the court is a court of inquiry on recovered prisoners of war the members will make the following declaration :—

*I, A.B., do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which                      became a prisoner of war, according to the true spirit and meaning of His Majesty's Orders and Regulations on this head; and I do further declare,*

*upon my honour, that I will not on any account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority.*

(J) The court may be re-assembled as often as the authority who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(K) The whole of the proceedings of a court of inquiry will be forwarded by the president to the authority who assembled the court.

(L) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier, except upon the trial of any officer or soldier under Section 29 of the Army Act, for wilfully giving false evidence before that court.<sup>3</sup>

(M) An officer or soldier who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Army Council see reason to order otherwise, an officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by anything in the evidence before, or in the report of, a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words.

1. See generally as to courts of inquiry, K.R. 733-743. For disqualification of members of courts of inquiry for service on subsequent courts-martial, see r. 19 (B) (iii). As to privilege of report of court and that of witnesses, see Ch. VIII, paras. 48-52.

A court of inquiry has no power to compel the attendance of civilian witnesses. As to expenses of witnesses, see Allowance Regulations, para. 322.

2. One officer cannot constitute a court. The court should normally consist of three members at least (K.R. 733); but two are legally sufficient.

3. This privilege, however, extends only to military tribunals. If a person is being tried in an ordinary criminal court, statements made by him voluntarily before a court of inquiry may be given in evidence against him; *R. v. Colpus L.R.*, (1917) 1 K.B. 574. A charge can only be laid under A.A. 29 if the evidence before the court of inquiry was properly given on oath, i.e., if under para. (N) of this rule it was required to be so taken.

*Regulations for Courts of Inquiry under Section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.*

Courts of inquiry as to illegal absence under Army Act, s. 72.

**125.—(A)** A court of inquiry under Section 72 of the Army Act,<sup>1</sup> will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section.<sup>2</sup>

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration<sup>3</sup> of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.



(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and will put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the court in making their declaration, will give due weight to the evidence of all such witnesses.

(E) A court of inquiry will administer the same oath<sup>4</sup> or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

1. See notes to A.A. 72.

2. See note 1 to r. 124.

The court must not be assembled until the soldier has been absent for a period of 21 *clear* days—excluding the day on which the absence commenced and that on which the court assembles.

3. The court, in making their declaration on A.F. A.2, will follow the wording shown below. An exact reproduction of the declaration will be entered in A.B. 161. (See K.R. 1620.) It should be free from alteration or erasure.

*Declaration.*

The court declare that ..... (*number, rank, name, corps*) illegally absented himself without leave (or other sufficient cause) at ..... (*station or place*) ..... on the ..... day of .....; that he is still so absent, and that on the ..... (*date on which the inventory of kit was taken*) ..... he was deficient, and that he is still deficient of the following articles (*value of equipment and public clothing to be stated*)

.....	
.....	
Names of	President.
President	{
and	
Members.	
	Members.

In framing a charge of losing by neglect under A.A. 24 (2), the date of the inventory should be assigned.

Before a court of inquiry are entitled to find deficiencies, they will require evidence:—

- (1) that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient;
- (2) that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient;
- (3) that none of the articles have since been recovered. (Any articles recovered will, of course, be omitted.)

When the declaration is given in evidence at a court-martial, it will be entered on A.F. B 115, which is admissible in evidence under A.A. 163 (1) (h), and will be produced instead of A.B. 161. A.F. B.115 must be a correct extract from A.B. 161 and free from alteration or erasure. A.F. A.2 is not admissible in evidence.

4. See r. 82, and as to form of oath see App. II, p. 763.

*Explanation of "Prescribed" and "Commanding Officer."*

126.—(A) The general officer or brigadier to whom a complaint may be made in pursuance of Section 43 of the Army Act shall, as respects a soldier serving elsewhere than in India, be the general or other officer, not below the rank of brigadier, in chief command of a command or district, in or under whose command the soldier may for the time being be.

(B) Any of the officers in this paragraph named shall be authorities having power under Section 57 of the Army Act to mitigate, remit or commute punishment<sup>1</sup> awarded by sentence of a court-martial:—

The general officer commanding-in-chief the command in which the trial took place; the officer in charge of administration of that

Prescribed officers for the purpose of Army Act, Section 43, 57 and 73, and competent military authorities for the purposes of Army Act, Sections 58, 60, 61, 64, 65 and 66.

command ; the general officer commanding-in-chief the command where the offender may for the time being be ; the officer in charge of administration of that command ; and the general or other officer commanding the division in or with which the offender may for the time being be.

(c) The competent military authority for the purpose of the proviso to Section 58 of the Army Act shall include the general or air officer commanding-in-chief in the field, and the officer who confirmed the sentence.

(d) The competent military authority for the purpose of Section 60 (1) (b) of the Army Act shall be :—

(i) In India—the Commander-in-Chief of the forces in India ; the Adjutant-General in India ; the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general ; the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general ; and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be ;

(ii) In a colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be ;

(e) The competent military authority for the purpose of Section 65 of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the commanding officer of the soldier under sentence, and every officer in or under whose command such soldier was serving when the sentence was passed or may for the time being be, provided that he does not hold a command inferior to that of the commanding officer.

(f) The competent military authority for the purpose of Section 61 (1) of the Army Act shall include :—

(i) In the United Kingdom—the commanding officer of the military convict, and every officer in or under whose command the military convict may for the time being be, provided that he does not hold a command inferior to that of the commanding officer ;

(ii) In India—the Commander-in-Chief of the forces in India ; the Adjutant-General in India ; the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general ; the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general ; and the general or other officer commanding a brigade area that does not form part of a district ;

(iii) In a colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be ;

(iv) In a foreign country—the officer in charge of administration of the forces in that country, and any officer not under the rank of brigadier in or under whose command the military convict may for the time being be.

(g) The competent military authority for the purpose of Section 66 (1) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the commanding officer of the soldier under sentence, and every officer in or under whose command such soldier may for the time being be, provided that he does not hold a command inferior to that of the commanding officer.

(н) The competent military authority for the purposes of Sections 61 (2), 64 (2) and 66 (2) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the officer who confirmed the sentence; and as respects a person under sentence in any of the following places shall include :—

- (i) In the United Kingdom—the general officer commanding-in-chief the command in or with which the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be; the officer in charge of administration of that command; the general or other officer commanding the district, division or brigade in or with which the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be; and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;
- (ii) In India—the Commander-in-Chief of the forces in India; the Adjutant-General in India; the general officer commanding-in-chief a command and his deputy adjutant and quartermaster-general; the general or other officer commanding a district or division and his deputy or assistant adjutant and quartermaster-general; and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;
- (iii) In a colony—the officer commanding the forces and the officer in charge of administration of the forces in that colony, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be;
- (iv) In a foreign country—the officer in charge of administration of the forces in that country, and any officer not under the rank of brigadier in or under whose command the military convict or soldier under sentence was serving when the sentence was passed or may for the time being be.

The competent military authority for the purposes of Sections 64 (2) and 66 (2) of the Army Act, as respects a soldier under sen-

tence of detention awarded by his commanding officer in whatever place he may for the time being be, shall include the commanding officer.

(1) The competent military authority for the purposes of Sections 61 (3) and 66 (3) of the Army Act, as respects a person under sentence in whatever place he may for the time being be, shall include the officer who confirmed the sentence and as respects a person under sentence in any of the following places shall include :—

In the United Kingdom—any of the authorities named in sub-paragraph (i) of paragraph (ii) of this rule ;

In India—any of the authorities named in sub-paragraph (ii) of paragraph (ii) of this rule ;

In a colony—any of the authorities named in sub-paragraph (iii) of paragraph (ii) of this rule ;

In a foreign country—any of the authorities named in sub-paragraph (iv) of paragraph (ii) of this rule.

But any of the authorities above mentioned shall not, by virtue thereof, be a remitting authority.

The competent military authority for the purpose of Section 66 (3) of the Army Act, as respects a soldier under sentence of detention awarded by his commanding officer in whatever place he may for the time being be, shall include the commanding officer.

(2) The competent military authority for the purpose of Section 73 (3) of the Army Act shall, as respects a soldier serving in the United Kingdom and in any place other than in India or in a colony, include any officer not under the rank of brigadier in or under whose command the soldier may for the time being be.

1. When a sentence is completed, including a sentence of reduction in rank, no mitigation, remission or commutation of punishment is to be granted without reference to the court-martial proceedings, and if the proceedings are not immediately available, the case is to be submitted to the War Office. (K.R. 704 (e)).

**Prescribed  
procedure  
for court of  
inquest  
(India)  
under Army  
Act, s. 134.**

**127.** When a court of inquest is required to be convened by the commanding officer under Section 134 of the Army Act, the court shall be convened and inquest held in manner following :—

- (a) The commanding officer of the station will order the court to assemble.
- (b) The court will consist of three officers and of a medical officer.
- (c) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.
- (d) The court, after hearing the evidence, shall report to the officer commanding the station the evidence as to the cause of the death, together with the written opinion of the medical officer of the court, on his examination of the body, as to the cause of death.

- (e) The commanding officer shall, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

28. The competent military authority in Part II. of the Army Act shall include the following officers, viz. :—

Prescribed officer for competent military authority (Army Act, s. 101).

- (i) In India,

The commander-in-chief of the forces in India, the general officer commanding-in-chief a command, the general or other officer commanding a district or division, and the general or other officer commanding a brigade area which does not form part of a district.

- (ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in that place; the general or other officer in charge of administration, or in command of a division or independent brigade in that place.

In addition to the above-mentioned officers, it also includes :—

- (iii) For the purposes of Sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included.
- (iv) For the purposes of any transfer by consent under Section 83 (2) any authority superior in command to the commanding officer of the soldier.
- (v) For the purposes of Section 99 any officer having power to convene a district court-martial for the trial of the soldier.
- (vi) Such officer as may be directed from time to time by His Majesty's Regulations to perform in any place or for any purpose specified in that behalf the duty of the competent military authority.<sup>1</sup>

1. See K.R. 657, directing other officers to act as the competent military authority for the purpose of A.A. 83 (7).

129. The expression "commanding officer" as used in the sections of the Army Act, relating to "*Courts-Martial*," and to the "*Power of Commanding Officer*," and in the provisions consequential thereon, and in these rules, means, in relation to any person, the officer whose duty it is, under the provisions of His Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority.<sup>1</sup>

Definition of "commanding officer."

It also, so far as relates to the summary award of any punishments for offences, being punishments which under the provisions of His Majesty's Regulations an officer commanding a squadron, company, troop, or battery is authorised to award, and so far as relates to a summary finding in a case of absence without leave, includes the officer commanding a squadron, company, troop, or battery.<sup>2</sup>

1. Every officer, however temporary or casual his command over a person accused may be, will be within this definition if the custom of the service enables him to "tell off" the accused. In all of these rules "commanding officer" has the meaning given to it by this rule.

A soldier who commits an offence while on leave may be confined in the guard detention room of any unit in the locality, but the C.O. of that unit cannot dispose of the charge and the man must be referred to his own unit for disposal.

In the portions of the Army Act not above mentioned "commanding officer" is not limited to the C.O. as defined by this rule, though the C.O., as so defined, is often (see notes) the proper officer to act. (See K.R. 526.)

It is laid down in K.R. 563, 564 that the C.O. of a detachment has the same power of awarding summary punishment (as laid down in K.R. 558-560) as the C.O. of the unit, subject to any restrictions that may be imposed by superior authority.

See also as to field general courts-martial, r. 122 (s).

2. See K.R. 542 and 565.

### *Prisons and Detention Barracks abroad.*

Committal  
and removal  
of soldiers  
under  
sentence  
abroad.

130.<sup>1</sup>—(A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* prison or detention barrack wherever situate, or if he is in any place mentioned in the first column of the following table, or if, having been sentenced in a foreign country, he is brought into any place so mentioned, may be committed or removed to a civil prison situate in any place mentioned opposite thereto in the second column of the table<sup>2</sup>:—

### TABLE.

A military prisoner being in (or, having been sentenced in a foreign country, is brought into) any place in any of the groups following:—

May be committed, or, if he has been committed to a prison, may be removed, to a civil prison in—

#### Group I.

(American and Mediterranean.)

Canada.  
Newfoundland.  
Bermuda.  
Falkland Islands.  
Gibraltar.  
Malta.  
Cyprus.  
Sudan.

Any place in Group I (American and Mediterranean); or  
In Group III (South African); or  
In Group VII.

#### Group II.

(West Indian.)

Bahamas.  
Barbados.  
British Guiana.  
British Honduras.  
Jamaica (including Turks and Caicos Islands).  
Leeward Islands.  
Trinidad and Tobago.  
Windward Islands.

Any place in Group II (West Indian);  
or  
In Group I (American and Mediterranean);  
or  
In Group III (South African); or  
In Group VII.

#### Group III.

(South African.)

Union of South Africa.  
South African High Commission Territories (Basutoland, Bechuanaland Protectorate and Swaziland).  
Southern Rhodesia.  
St. Helena.

Any place in Group III (South African); or  
In Group I (American and Mediterranean);  
or  
In Group V (Australasian); or  
In Group VII.

TABLE—*continued.*

<p>Group IV. (West African.)</p> <p>Nigeria (including British Cameroons). Gold Coast (including British Togoland). Sierra Leone. Gambia.</p>	<p>Any place in Group IV (West African); or In Group I (American and Mediterranean); or In Group II (West Indian); or In Group III (South African); or In Group VII.</p>
<p>Group V. (Australasian.)</p> <p>Commonwealth of Australia. New Zealand. Fiji and the Western Pacific High Commission.</p>	<p>Any place in Group V (Australasian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.</p>
<p>Group VI. (Eastern.)</p> <p>India, as defined by the Army Act, and including Aden and Perim. Palestine. Iraq. Mauritius. Seychelles. Ceylon. Straits Settlements. Malay States. Hong Kong.</p>	<p>Any place in Group VI; or In Group I (American and Mediterranean); or In Group III (South African); or In Group V (Australasian); or In Group VII.</p>
<p>Group VII.</p> <p>Channel Islands and the Isle of Man.</p>	<p>Any place in Group VII.</p>
<p>Group VIII. (East African.)</p> <p>Kenya Colony and Protectorate. Uganda. Zanzibar. Nyassaland. Tanganyika Territory. Somaliland. Northern Rhodesia.</p>	<p>Any place in Groups I—VIII.</p>

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere.

(b) A soldier sentenced to detention in any place out of the United Kingdom may be committed, or if he has been committed to a detention barrack or branch detention barrack, be removed, if occasion arises, to a detention barrack or branch detention barrack wherever situate; but this rule shall not authorise any removal from a detention barrack or branch detention barrack in the United Kingdom to a detention barrack or branch detention barrack elsewhere.

1. This rule is rendered necessary by A.A. 64 (3), (4).

2. Where a sentence of imprisonment is passed on a soldier serving outside the United Kingdom, the military prisoner can undergo his sentence as provided in A.A. 64 (3), (4), or as prescribed by this rule.

The main object as regards a colony where there is no military prison, is to enable a military prisoner to be removed with, or sent to, his regiment if the regiment is serving in that colony, but not to allow prisoners in any other

case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Military prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a military prison in any place, if they could not be removed under this rule to a civil prison in that place.

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by A.A. 187 (2), 190 (23).

### PART III.—SUPPLEMENTAL.

Exercise of powers vested in holder of military office.

**131.** Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service<sup>1</sup>; and requisitions of emergency under Section 115 of the Army Act may be signed on behalf of a general officer commanding-in-chief (or general officer commanding) regular forces in Great Britain or Northern Ireland by a deputy-assistant director of remounts or an assistant (or deputy-assistant) director of supplies and transport.

1. See A.A. 171.

Cases unprovided for.

**132.** In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

Forms in Appendices.

**133.—(A)** The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from any such form will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

(B) An omission of any such form will not, by reason only of the omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which the notes and instructions apply.

The Army Council may append to any of the forms when issued for use such further notes as they think fit, and any such notes will be considered as instructions which it is expedient to follow in all cases to which they apply.

Definitions.

**134.** In these rules, unless the context otherwise requires—

(A) The expression "proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of His Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression "Army Act" includes any Act, whether passed before or after the date of these rules, which amends or applies the Army Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial.<sup>1</sup>



(c) In any sentence of imprisonment, detention or field punishment passed after the date on which these rules come into operation, the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month."

(d) Other expressions have the same meaning as if these rules formed part of the Army Act,<sup>2</sup> and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

1. See for instance the Reserve Forces Act, 1882, and the T.R.F. Act, 1907.
2. See particularly A.A. 190 and note.

**135**—(A) Time for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay shall include those days. Construction of rules.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise, dispenses with the writing.

(c) These rules shall apply to a person subject to military law as an officer,<sup>1</sup> in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier<sup>2</sup> in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act.

1. See A.A. 175.
2. See A.A. 176.

**136.** These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom.<sup>1</sup> Application of rules to Channel Islands and Isle of Man.

1. The Channel Islands and Isle of Man are colonies for the purpose of imprisonment and detention: see A.A. 187 (2) and r. 130.

**137.** These rules shall apply in every place, whether within or without His Majesty's dominions. Extent of application of rules.

**138.** These rules may be cited as the Rules of Procedure, 1926. Short title.

**139.**—(A) The foregoing rules shall come into full force on the first day of October, 1926, and on that day the Rules of Procedure, 1907, as amended by any subsequent rules, so far as they are then in force, shall determine. Commencement of rules.

(B) Any court-martial, proceeding, or thing held, done, or commenced under the last-mentioned Rules of Procedure shall be as valid and may be completed and carried into effect as if those rules were still in force.

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His Majesty has made the foregoing rules in pursuance of the Army Act, and those rules will therefore be observed by all persons concerned.

(Signed) L. WORTHINGTON-EVANS.

War Office,

12th August, 1926.

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The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 70 of the said Act.

(Signed) JOHN D. KELLY.

(Signed) F. L. FIELD.

Admiralty,

12th August, 1926.

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## Appendices to Rules of Procedure, 1926.

### FIRST APPENDIX.

App. I.

#### FORMS OF CHARGES.

##### NOTE AS TO USE OF FORMS OF CHARGES.

(1) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 12.)

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts : a statement of the offence, and a statement of the particulars. (Rule 13 (b).)

(4) The statement of the offence will be in one of the forms in Part II.

(5) Where two or more words or expressions occur in Part II bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions ; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 13 (A).)

(8) For example, a man may be charged with making away with, by selling, his arms, ammunition, *and* regimental necessities ; but a charge for making away with, by selling, his arms, ammunition, *or* regimental necessities will be a bad charge.

(9) A man should not be charged, however, with making away with by pawning *and* selling his arms and regimental necessities, as in such case he is charged with two distinct offences, which

App. I: ought to be included in two distinct charges, one for making away with by *pawning* his arms and regimental necessaries, the other for making away with by *selling* his arms and regimental necessaries.

(10) In the first example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(a) by pawning, (b) by selling—although committed in respect of the same objects—arms and regimental necessaries.

(11) In a few cases, shown in italics bracketed thus [ ] (as for instance, in s. 4 (1), s. 6 (1), (*h*), s. 6 (2), (*z*), and s. 24 (1), (3), and (5) ), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as "other person," or "other place," or "other means," and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12) Words inserted in brackets, thus [ ], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service, the words, "when on active service," must be omitted.

(13) In some cases (for example, s. 10 (4), s. 15 (3) and (4), s. 16, and ss. 27 (3) and (4), and 37) the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the accused is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit.

(14) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," &c., or "in having," &c., and stating in brief ordinary language what the accused is alleged to have done.

(15) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 13 (e)); as, for example, "in having done the acts alleged in the particulars of the first charge," or "in that, at the place and time aforesaid, he was deficient of the regimental necessaries above mentioned in the second charge, which it was his duty to have." If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17) The statement of particulars should specify all the ingredients necessary to constitute the offence: for example, if the charge is under s. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command; while, if the charge is under s. 9 (1), the "particulars" should also show how the command was given personally, how the superior officer was in the execution of his office, and how the accused showed a wilful defiance of authority.

(18) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19) The "particulars" should always state the date on which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave or being drunk on a post.

(20) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times: as, for instance, in the case of absence without leave, or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although they are not the essence of the offence.

(23) There must be added at the end of the "particulars" a statement of any expenses, loss, damage, or destruction in respect of which the court-martial will be asked to award compensation under s. 137 or 138 of the Army Act (Rule 13 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the accused thereby obtained a free kit of regimental necessaries, value\* pounds, and in the case of a charge under s. 10 (2) or (3), that the accused thereby damaged 's coat, to the value of shillings, and 's watch to the value of shillings; and other statements may be made, according to the facts.

(24) If, however, the expenses, loss, damage, or destruction were caused by an act or omission which constitutes another offence.

\* See K R. 624, 626.

App. I. specially specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts, and is deficient of his regimental necessaries, he should be charged in a separate charge for loss by neglect of his regimental necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any Act other than the Army Act must, in accordance with Rules of Procedure 13 and 134 (B), follow as nearly as possible the words of the Act; and where the enactment is in the alternative, each charge must as in the following forms, state only one of the alternatives.

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## FORMS OF CHARGES.

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### PART I.

#### *Commencement of Charge-Sheet.*

The accused [*number, rank, name, battalion, regiment*] a soldier [officer] of the regular forces,

*or,*

The accused [*rank, name*] an officer of the regular forces on the active list on half-pay,

*or,*

The accused [*rank, name*] retired pay [*or pensioner, or reservist*] employed on military service under the orders of an officer of the regular forces who is subject to military law,

*or,*

The accused [*rank, name, corps (if any)*] an officer of the reserve of officers ordered on duty (or service), for which as such he is liable,

*or,*

The accused [*rank, name, corps (if any)*] an officer of the supplementary reserve of officers ordered on duty (or service) for which as such he is liable,

*or,*

The accused [*rank, name, corps*] an officer of the territorial army, on the active list [*or as the case may be (see Sect. 175 (3A) of the Army Act.)*],

*or,*

The accused [*number, rank, name, battalion, regiment*] a soldier of the territorial army out for training [*or otherwise subject to military law*],

*or,*

The accused [*rank, name, regiment*] an officer of the militia,

*or,*

The accused [*rank, name*] an officer of the volunteer battalion of the \_\_\_\_\_ regiment, whose corps is on actual military service [*or who is otherwise subject to military law*],

or,

The accused [*rank, name, corps*] an officer [a soldier] of a colonial force raised by order of His Majesty, and serving under the orders of an officer of the regular forces,

or,

The accused [*name*] being a person subject to military law as an officer [under the provisions of s. 175 (7) [*or* (8)] of the Army Act],

or,

The accused [*number, rank, name*] a militiaman (supplementary reservist) out for training [*or otherwise subject to military law*],

or,

The accused [*name*] a follower [sutler] of His Majesty's forces being subject to military law as a soldier [under the provisions of s. 176 (9) [*or* (10)] of the Army Act],

is charged with—

*Where the offence has been committed by a person while subject to military law, and he has ceased to be so subject at the time when he is charged (in accordance with the provisions of s. 158 of the Army Act) ; as, for example, if a soldier has been transferred to the reserve, or discharged, or if the training period of a militiaman (supplementary reservist) or man of the territorial army has expired, the commencement of the charge will run as follows :—*

The accused [*name*] is charged with having, while being [*number, rank*] of the \_\_\_\_\_ battalion \_\_\_\_\_ regiment [a soldier of the regular forces] [*or otherwise subject to military law*] committed the following offence [offences], namely;

or,

The accused [*name*] is charged with having, while being [*number, rank*] of the \_\_\_\_\_ battalion \_\_\_\_\_ regiment, a militiaman (supplementary reservist) [*or man of the territorial army*] out for training [*or otherwise subject to military law*], committed the following offence [offences], namely,

or,

(as the case may be, see Sections 175 and 176 of the Army Act).





Section 6.

App. I:

- (1.) (b) [When on active service,] leaving his {guard  
picquet  
patrol  
post} without orders from his superior officer.
- (k) [When on active service,] by {discharging firearms  
drawing swords  
beating drums  
making signals  
using words  
[any means whatever]} intentionally occasioning false alarms {in action.  
on the march.  
in the field.  
[elsewhere.]}
- (i) [When on active service,] treacherously {parole  
watchword  
countersign} to a person not entitled to receive it.
- [When on active service,] treacherously {parole  
watchword  
countersign} different from what he received.
- (k) When a soldier acting as sentinel [on active service] leaving his post before he was regularly relieved.
- (2.) (a) [When on active service,] leaving his commanding officer to go in search of plunder.
- (b) [When on active service,] forcing a safeguard.
- (c) [When on active service,] {forcing  
striking} a sentinel.
- (d) [When on active service,] {breaking  
into a } [other place] in search of plunder.
- (e) When a soldier acting as sentinel {sleeping on his post.  
[on active service] being drunk on his post.
- (3.) (a) By {discharging firearms  
drawing swords  
beating drums  
making signals  
using words  
[any means whatever]} negligently occasioning {in action.  
on the march.  
in the field.  
[elsewhere.]}
- (b) Making known the {parole  
watchword  
countersign} to a person not entitled to receive it.
- Without good and sufficient cause giving a {parole  
watchword  
countersign} different from what he received.
- (c) Impeding .. .. {the provost-marshal  
an assistant provost-marshal  
an officer  
a non-commissioned officer  
[other person]} legally exercising authority } under } the provost-marshal.  
on behalf of }
- When called on, refusing to assist in the execution of his duty {the provost-marshal  
an assistant provost-marshal  
an officer  
a non-commissioned officer  
[other person]} legally exercising authority } under } the provost-marshal.  
on behalf of }
- (d) Doing violence to a person bringing {provisions  
supplies} to the forces.
- Committing an offence {property  
against the person} of an inhabitant of {the country in which he  
was serving.
- (e) Irregularly {detaining  
appropriating  
to his own} {corps  
battalion  
detachment} {contrary to  
orders issued  
in that respect} {provisions  
supplies} proceeding to the forces.

## App. I.

## MUTINY AND INSUBORDINATION.

## Section 7.

- (1.)  $\left\{ \begin{array}{l} \text{Causing} \\ \text{Conspiring with other} \\ \text{persons to cause} \end{array} \right\}$  a mutiny  $\left\{ \begin{array}{l} \text{sedition} \end{array} \right\}$  in His Majesty's  $\left\{ \begin{array}{l} \text{military forces.} \\ \text{naval forces.} \\ \text{air forces.} \end{array} \right\}$
- (2.) Endeavouring to seduce a person  $\left\{ \begin{array}{l} \text{military forces} \\ \text{naval forces} \\ \text{air forces} \end{array} \right\}$  from allegiance to His Majesty in His Majesty's
- Endeavouring to persuade a  $\left\{ \begin{array}{l} \text{military forces} \\ \text{naval forces} \\ \text{air forces} \end{array} \right\}$  person in His Majesty's  $\left\{ \begin{array}{l} \text{a mutiny.} \\ \text{sedition.} \end{array} \right\}$  to join in
- (3.) Joining in  $\left\{ \begin{array}{l} \text{a mutiny} \\ \text{sedition} \end{array} \right\}$  in forces belonging to His Majesty's  $\left\{ \begin{array}{l} \text{military forces.} \\ \text{naval forces.} \\ \text{air forces.} \end{array} \right\}$
- Being present at and not using his utmost endeavours to suppress  $\left\{ \begin{array}{l} \text{a mutiny} \\ \text{sedition} \end{array} \right\}$  in forces belonging to His Majesty's  $\left\{ \begin{array}{l} \text{military forces.} \\ \text{naval forces.} \\ \text{air forces.} \end{array} \right\}$
- (4.) After coming to the knowledge of  $\left\{ \begin{array}{l} \text{an actual mutiny} \\ \text{an intended mutiny} \\ \text{actual sedition} \\ \text{intended sedition} \end{array} \right\}$  in forces belonging to His Majesty's  $\left\{ \begin{array}{l} \text{military} \\ \text{forces} \\ \text{naval forces} \\ \text{air forces} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{failing to inform} \\ \text{without delay his} \\ \text{commanding officer} \\ \text{of the same.} \end{array} \right\}$

## Section 8.

- (1.)  $\left\{ \begin{array}{l} \text{Striking} \\ \text{Using violence to} \\ \text{Offering violence to} \end{array} \right\}$  his superior officer, being in the execution of his office.
- (2.) [When on active service,]  $\left\{ \begin{array}{l} \text{striking} \\ \text{using violence to} \\ \text{offering violence to} \end{array} \right\}$  his superior officer.
- [When on active service,] using  $\left\{ \begin{array}{l} \text{threatening} \\ \text{insubordinate} \end{array} \right\}$  language to his superior officer.

## Section 9.

- (1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2.) [When on active service,] disobeying a lawful command given by his superior officer.

## Section 10.

- (1.) When concerned in a  $\left\{ \begin{array}{l} \text{quarrel} \\ \text{striking} \\ \text{fray} \\ \text{disorder} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{refusing to obey} \\ \text{using violence to} \\ \text{offering violence to} \end{array} \right\}$  an officer who ordered him into arrest.
- (2.)  $\left\{ \begin{array}{l} \text{Striking} \\ \text{Using violence to} \\ \text{Offering violence to} \end{array} \right\}$  a person in whose custody he was placed.
- (3.) Resisting an escort whose duty it was  $\left\{ \begin{array}{l} \text{to apprehend him.} \\ \text{to have him in charge.} \end{array} \right\}$
- (4.) Breaking out of  $\left\{ \begin{array}{l} \text{barracks.} \\ \text{camp.} \\ \text{quarters.} \end{array} \right\}$

## Section 11.

Neglecting to obey  $\left\{ \begin{array}{l} \text{general} \\ \text{garrison} \\ \text{[other]} \end{array} \right\}$  orders.

## DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.

## Section 12.

- (1.) (a)  $\left\{ \begin{array}{l} \text{[When on active service]} \\ \text{[When under orders for} \\ \text{active service]} \end{array} \right\}$  deserting His Majesty's service.
- (b)  $\left\{ \begin{array}{l} \text{[When on active service]} \\ \text{[When under orders for} \\ \text{active service]} \end{array} \right\}$  attempting to desert His Majesty's service.
- (c)  $\left\{ \begin{array}{l} \text{persuading} \\ \text{endeavouring to persuade} \\ \text{procuring} \\ \text{attempting to procure} \end{array} \right\}$  a person subject to military law to desert from His Majesty's service.

Section 13.

App. 1.

- 1.) (a) or (b) Fraudulent enlistment.

Section 14.

- (1.) Assisting a person subject to military law to desert His Majesty's service.
- (2.) When cognizant of { the desertion of a person taking some steps in his power to cause the } giving notice to his commanding officer, deserter intending to be apprehended.

Section 15.

- (1.) Absenting himself without leave.
- (2.) Failing to appear at the place of { parade } appointed by his commanding officer.  
Without leave, before he was re- { rendezvous } appointed by his commanding officer.  
Without urgent necessity, quitting the ranks.
- (3.) { When in camp } being { beyond the limits } general orders, without a pass or written leave from his commanding officer.  
{ When (elsewhere) } found { in a place prohibited by } { other }
- (4.) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

DISGRACEFUL CONDUCT.

Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

Section 17.

- { When charged with } { the care of public } money { stealing } the same.  
{ When concerned in } { the distribution of regimental } goods { fraudulently misapplying }  
{ When charged with } { the care of public } money { being concerned in the } { stealing }  
{ When concerned in } { the distribution of regimental } goods { conniving at the } { fraudulent misapplication } thereof.  
{ When charged with } { the care of public } goods wilfully damaging  
{ When concerned in } { the distribution of regimental } goods the same.

Section 18.

- (1.) Malingering.  
{ Feigning } disease.  
{ Producing } infirmity.
- (2.) Wilfully { maiming } { himself } { with intent } himself { } unit for service.  
{ injuring } { a person subject to military law } { thereby to render } { that person }
- Causing himself to be { maimed } by some person, with intent thereby to render himself unit for service.
- (3.) { Being wilfully guilty of misconduct by means of which misconduct } he { produced aggravated } disease.  
{ Wilfully disobeying orders by means of which disobedience } { delayed the cure of } infirmity.
- (4.) { Stealing } { money } { the property of a person subject to military law. }  
{ Embezzling } { goods } { belonging to a regimental } mess.  
{ Fraudulently misapplying } { public money, public goods. } { belonging to the Navy, Army, and Air Force Institutes, } band.  
institution

## App. I.

Receiving, knowing them to be	{ stolen embezzled	{ money goods	{ the property of a person subject to military law. belonging to a regimental mess, band, institution. belonging to the Navy, Army, and Air Force Institutes. public money. public goods.
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(5.) Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act.

Disgraceful conduct of { a cruel  
an indecent  
an unnatural } kind.

## DRUNKENNESS.

## Section 19.

Drunkenness.

## OFFENCES IN RELATION TO PERSONS IN CUSTODY.

## Section 20.

- (1.) When in command of a { guard  
picquet  
patrol  
post } [wilfully] releasing without proper authority a person committed to his charge.
- (2.) { Wilfully  
Without reason-  
able excuse } allowing to escape a person { committed to his charge.  
whom it was his duty to { keep,  
guard.

## Section 21.

- (1.) Unnecessarily detaining a { arrest  
person in  
confinement } without bringing him to trial.
- Unnecessarily failing to bring a person's case before the proper authority for investigation.

- (2.) After having committed a person to the custody of { an officer  
a non-commissioned officer  
a provost-marshal  
an assistant provost-marshal } failing without reasonable cause to deliver { at the time of the committal or as soon as practicable within 24 hours after such committal } { to the officer to the non-commissioned officer to the provost-marshal to the assistant provost-marshal } into whose custody the person was committed, an account in writing signed by himself of the offence with which the person so committed was charged.

- (3.) When in command of a guard failing { as soon as he was relieved from { guard } his { duty } within twenty-four hours after a person was committed to his charge } to give in writing to the officer to whom he was ordered to report { that person's name.  
that person's offence so far as known to him.  
the name } of the officer { by whom the person was charged.  
the rank } of the { person } { by whom the person was committed to his custody.  
the writer.  
account given him } { officer } { person }

## Section 22.

When in { arrest  
confinement  
prison  
{ other lawful custody } } { escaping.  
attempting to escape.

OFFENCES IN RELATION TO PROPERTY.

App. I.

Section 23.

- (1.) Conniving at the exaction of an exorbitant price for a {house stall} let to a sutler.
- (2.) {Laying a duty upon  
Taking a fee  
in respect of  
Taking an  
advantage  
in respect of  
Being in-  
terested in } the sale of provisions } brought {a garrison } in  
the sale of merchandise } into {a camp } which } command.  
{a station } he } authority.  
{a barrack } had }  
{a [place]}
- {the sale of } provisions } for the use of some of His Majesty's  
the purchase of } stores } forces.

Section 24.

- (1.) {Making away with by  
Being concerned in making away  
with by } {pawning  
selling  
destruction  
[otherwise]} {his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
public property issued to him for  
his use.  
public property entrusted to his  
care for military purposes.
- (2.) Losing by neglect {his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
public property issued to him for his use.  
public property entrusted to his care for military purposes.
- (3.) Making away with by {pawning  
selling  
destruction  
[otherwise]} {a military  
an air-force} decoration granted him.
- (4.) Wilfully injuring {his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
public property issued to him for his use.  
public property entrusted to his care for military purposes.  
a military decoration granted him.  
an air-force decoration granted him.  
property belonging to {a comrade.  
an officer.  
a regimental mess.  
a regimental band.  
a regimental institution.  
public property.
- (5.) Ill-treating a {horse  
[other animal]} used in the public service.

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

Section 25.

- (1.) In a {report  
return  
muster roll  
pay list  
certificate  
book  
route  
[other  
documents]} made by him  
signed by him  
of the contents  
of which it was  
his duty to  
ascertain the  
accuracy } knowingly making {a false statement.  
being privy to the } a fraudulent statement.  
making of } an omission with intent  
to defraud.
- (2.) {Knowingly, and  
with intent to} injure some person {suppressing  
making away with } a document  
defacing } which it  
altering } was his  
duty to } preserve.  
produce.
- (3.) Where it was his official duty to make a declaration respecting a matter knowingly making a false declaration.

## App. I.

## Section 26.

- (1.) When signing a document relating to
- |   |   |  |
|---|---|--|
| <p>(2.) { Refusing to<br/>By culpable neglect omitting to }</p> | <p>{ pay<br/>arms<br/>ammunition<br/>equipments<br/>clothing<br/>regimental<br/>necessaries<br/>provisions<br/>furniture<br/>bedding<br/>blankets<br/>sheets<br/>utensils<br/>forage<br/>stores }</p> | <p>leaving in blank a material part for which his signature was a voucher.</p> <p>{ make.<br/>a report } which it was his duty to { make.<br/>send. a return }</p> |
|---|---|--|

## Section 27.

- (1.) Making a false accusation against { an officer  
a soldier } knowing such accusation to be false.
- (2.) In making a complaint where he thought himself wronged { knowingly making a false statement affecting the character of  
knowingly and wilfully suppressing }
- |   |  |
|---|--|
| <p>(3.) Falsely stating to his commanding officer that he had</p> | <p>been guilty of { desertion,<br/>fraudulent enlistment,<br/>desertion from the navy,<br/>desertion from the air force,<br/>a portion of the regular forces,<br/>a portion of the reserve forces,<br/>a portion of the auxiliary forces,<br/>the navy,<br/>the air force. }</p> |
|   | <p>served in and been discharged from { }</p>  |
- (4.) Making a wilfully false statement to a { military officer } in respect of the prolongation of justice of furlough.

## OFFENCES IN RELATION TO COURTS-MARTIAL.

## Section 28.

- (1.) When duly { summoned  
ordered to attend } as a witness before a court-martial, making default in attending.
- (2.) Refusing to { take an oath legally required by a court-martial to be taken.  
make a solemn declaration legally required by a court-martial to be made. }
- (3.) Refusing to produce a { power  
document in his control } legally required by a court-martial to be produced by him.
- (4.) Refusing when a witness to answer a question to which a court-martial legally required an answer.
- (5.) Being guilty of contempt of a { using { insulting  
threatening } language.  
court-martial by causing { an interruption } in the proceedings of such  
a disturbance } court.

## Section 29.

Wilfully giving false { oath  
evidence when ex- { solemn de-  
amination } clarations } before { a court-martial.  
an officer } authorised by the Army Act to administer an oath.

OFFENCES IN RELATION TO BILLETING.

App. 1.

Section 30.

- (1) Being guilty of ill-treatment by  $\left\{ \begin{array}{l} \text{violence} \\ \text{extortion} \\ \text{making disturbances} \\ \text{in billets} \end{array} \right\}$  of the occupier of a  $\left\{ \begin{array}{l} \text{person} \\ \text{house in which a} \\ \text{horse} \end{array} \right\}$  was billeted.
- (2)  $\left\{ \begin{array}{l} \text{Refusing} \\ \text{Neglecting} \end{array} \right\}$  on complaint and proof of the ill-treatment by  $\left\{ \begin{array}{l} \text{violence by} \\ \text{extortion by} \\ \text{making disturbances} \\ \text{in billets by} \end{array} \right\}$  an officer  $\left\{ \begin{array}{l} \text{under his command} \\ \text{of the occupier of} \\ \text{a house in which a} \\ \text{person} \end{array} \right\}$  was billeted to cause compensation to be made for the same.
- (3) Failing to comply with the provisions of the Army Act with respect to the  $\left\{ \begin{array}{l} \text{payment of the} \\ \text{just demands} \\ \text{of a person on} \\ \text{whom} \\ \text{making up and} \\ \text{transmitting} \\ \text{of an account} \\ \text{of the money} \\ \text{due to a person} \\ \text{on whom} \end{array} \right\}$  he  $\left\{ \begin{array}{l} \text{his horse} \\ \text{an officer} \\ \text{a soldier} \end{array} \right\}$  under his command  $\left\{ \begin{array}{l} \text{had been} \\ \text{billeted.} \end{array} \right\}$
- (4) Wilfully demanding billets which were not actually required for some  $\left\{ \begin{array}{l} \text{person} \\ \text{horse} \end{array} \right\}$  entitled to be billeted.
- (5)  $\left\{ \begin{array}{l} \text{Taking} \\ \text{Knowingly suffering to be taken} \end{array} \right\}$  from a  $\left\{ \begin{array}{l} \text{money} \\ \text{person} \end{array} \right\}$  a reward  $\left\{ \begin{array}{l} \text{excusing} \\ \text{relieving} \end{array} \right\}$  a person from  $\left\{ \begin{array}{l} \text{his liability} \\ \text{a part of his liability} \end{array} \right\}$  in respect of the  $\left\{ \begin{array}{l} \text{billeting} \\ \text{quartering} \end{array} \right\}$  of  $\left\{ \begin{array}{l} \text{officers,} \\ \text{soldiers,} \\ \text{horses.} \end{array} \right\}$
- (6)  $\left\{ \begin{array}{l} \text{Offering} \\ \text{Using} \end{array} \right\}$  menace to  $\left\{ \begin{array}{l} \text{a constable} \\ \text{a civil officer} \end{array} \right\}$  to make him give billets contrary to the Army Act.
- Using  $\left\{ \begin{array}{l} \text{menace} \\ \text{to} \\ \text{compulsion} \\ \text{on} \end{array} \right\}$  a constable  $\left\{ \begin{array}{l} \text{tending} \\ \text{to} \\ \text{discourage} \end{array} \right\}$  him from  $\left\{ \begin{array}{l} \text{performing} \\ \text{part} \\ \text{of} \end{array} \right\}$  his duty under the provisions of the Army Act relating to billeting.
- Offering  $\left\{ \begin{array}{l} \text{menace} \\ \text{to} \\ \text{compulsion} \\ \text{on} \end{array} \right\}$  a civil officer  $\left\{ \begin{array}{l} \text{tending} \\ \text{to induce him to do} \\ \text{something contrary to} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{to receive without his} \\ \text{consent, a} \\ \text{person} \\ \text{horse} \end{array} \right\}$  not duly billeted upon him in pursuance of  $\left\{ \begin{array}{l} \text{the provisions} \\ \text{of the Army} \\ \text{Act relating} \\ \text{to billeting.} \end{array} \right\}$
- (7)  $\left\{ \begin{array}{l} \text{Using} \\ \text{Offering} \end{array} \right\}$  menace to  $\left\{ \begin{array}{l} \text{a person} \\ \text{tending to oblige} \\ \text{him} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{to receive without his} \\ \text{consent, a} \\ \text{person} \\ \text{horse} \end{array} \right\}$  not duly billeted upon him in pursuance of  $\left\{ \begin{array}{l} \text{the provisions} \\ \text{of the Army} \\ \text{Act relating} \\ \text{to billeting.} \end{array} \right\}$

OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES.

Section 31.

- (1) Wilfully demanding  $\left\{ \begin{array}{l} \text{carriages} \\ \text{animals} \\ \text{vessels} \\ \text{food} \\ \text{forage} \\ \text{stores} \end{array} \right\}$  which were not actually required for purposes authorised by the Army Act.
- (2) Failing to comply with the provisions of the Army Act, relating to the impressment of carriages, as regards  $\left\{ \begin{array}{l} \text{the payment of sums due} \\ \text{for carriages.} \\ \text{the weighing of the load.} \end{array} \right\}$
- (3) Constraining  $\left\{ \begin{array}{l} \text{a carriage} \\ \text{an animal} \\ \text{a vessel} \end{array} \right\}$  furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages  $\left\{ \begin{array}{l} \text{to travel against the will of} \\ \text{the person in charge thereof,} \\ \text{beyond the proper distance.} \\ \text{to carry against the will of} \\ \text{the person in charge thereof,} \\ \text{a greater weight than he} \\ \text{was required by the said} \\ \text{provisions to carry.} \end{array} \right\}$

App. I. (4.) Failing to discharge as speedily as practicable { a carriage  
an animal  
a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.

(5.) { Compelling  
Permitting  
the compelling of } a person in charge of { a carriage  
an animal  
a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages to take thereon } baggage { not entitled to be carried. } though not furnished on a requisition of emergency a { soldier  
servant  
woman. } { who  
was not  
sick,  
person.

(6.) { Ill-treating  
Permitting the ill-treatment of } a person in charge of { a carriage  
an animal  
a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.

(7.) { Using  
Offering } { menace  
to compulsion on } a constable { to make him provide } { a carriage  
an animal  
a vessel  
food  
forage  
stores } which he was not bound in pursuance of the provisions of the Army Act relating to the impressment of carriages, to provide. { tending to deter  
discourage  
tending to induce him to do something contrary to } { him from performing a part of his duty in relation to the providing of } { carriages.  
animals.  
vessels.  
food.  
forage.  
stores.

(8.) Forcing { a carriage  
an animal  
a vessel  
food  
forage  
stores } from the owner thereof.

## OFFENCES IN RELATION TO ENLISTMENT.

### Section 32.

(1.) After having been { discharged with disgrace from a part of His Majesty's  
dismissed with disgrace from } { military  
forces  
air  
forces } enlisting in the regular forces without declaring the circumstances of his { discharge.  
dismissal.

### Section 33.

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

### Section 34.

(1.) Being concerned in the enlistment for service in the regular forces of a man when he { knew  
had reasonable  
cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act.

(2.) Wilfully contravening { the enactments of the Army Act  
[other enactments]  
the regulations of the service } in a matter relating to the { enlistment  
attestation } of soldiers of the regular forces.

## MISCELLANEOUS MILITARY OFFENCES.

### Section 35.

Using { traitorous  
disloyal } words regarding the Sovereign.



Section 36.

Without due authority { verbally in writing by signal [otherwise] } dis-closing { the numbers of the position of some forces some magazines of the forces some stores of the forces } at such time and in such manner as to have produced effects injurious to His Majesty's service.

{ some prepar-ations for some orders relating to } { opera-tions move-ments } of some forces

Section 37.

- (1.) { Striking } a soldier.
- (2.) After receiving the { an officer } unlawfully detaining pay of { a soldier } unlawfully refusing to pay } the same when due.

Section 38.

- (1.) { Fighting Promoting Being concerned in Conniving at fighting } a duel.
- (2.) Attempting to commit suicide.

Section 39.

On application being made to him { neglecting refusing } { to deliver over to the civil magistrate to assist in the lawful apprehension of } an officer a soldier { accused of an offence punishable by a civil court.

Section 40.

{ An act Conduct Disorder Neglect } to the prejudice of good order and military discipline.

Section 41.

- (1-4.) { When on active service In Gibraltar In a place not in the United Kingdom or Gibraltar and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence } committing the offence of { treason. murder. manslaughter. treason-felony. rape.

(5.) Committing a civil offence, that is to say [state the offence according to English law, either using legal terms, e.g., arson, larceny, larceny from the person, assault, robbery, with violence, &c., or, in ordinary language, e.g., stealing, maliciously injuring property, setting fire to a house, &c.].

Section 155.

- (1-3.) { Negotiating Acting as agent for Aiding Conniving at } { the { sale purchase } of a commission in His Majesty's regular forces. the { giving consideration in respect of a { promotion in retirement from employment in } His Majesty's regular forces. any exchange made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a } sum of money { consideration } was { given. received.

## App. I.

## ILLUSTRATION OF CHARGE.

*Note.*—The following is an illustration of a complete charge-sheet, with statement of offences and particulars, as it would be placed before a district court-martial.

## CHARGE-SHEET.

The accused, No. 153, Private John Smith, 2nd Battalion  
Regiment, a soldier of the regular forces, is charged  
with :—

First charge  
Sec. 8 (2)  
Army Act.

*Using threatening language to his superior officer—*

in that he

at Plymouth, on the 20th January, 19 , said to Serjeant William Robinson, the  
Regiment, " I will punch your head,"  
or words to that effect.

Second  
charge  
Sec. 10 (3)  
Army Act.

*Resisting an escort whose duty it was to have him in charge—*

in that he

at Plymouth, on the 20th January, 19 , resisted the escort taking him to the guard detention room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Brown, another of the said escort, to the value of five shillings.

A.B.,

Plymouth,                      Commanding 2nd Battalion,      Regiment.  
22nd January, 19

To be tried by a district court-martial.

X.Y.,

Commanding                      Brigade,  
(or Staff-Officer who should sign for  
Commanding                      Brigade).

Devonport,  
24th January, 19

[The following specimen charges (which are not, however, prescribed by any Rules) may be found useful.]

### SPECIMEN CHARGES.

**Notes.**—The words in brackets in the following specimen charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are "when on active service" they increase the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a less grave offence.

The words "soldier of the regular forces" in the description of the accused are not essential where he is described as belonging to a regiment or battalion in the regular forces.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

#### No. 1.

##### CHARGE-SHEET.

The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—

*Shamefully casting away his arms in the presence of the enemy,*  
in that he, at , on , when on outlying picket, and attacked by  
the enemy, shamefully cast away his rifle, left his picket, and ran away. Sec. 4 (2),  
Army Act.

#### No. 2.

##### CHARGE-SHEET.

The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—

*Misbehaving before the enemy in such manner as to show cowardice,*  
in that he, at , on , during an attack on , and  
when under the enemy's fire, fell out of the ranks, ran away and secreted himself  
under a bank. Sec. 4 (7),  
Army Act.

#### No. 3.

##### CHARGE-SHEET.

The accused, No. , Private , Battalion,  
Regiment, a soldier of the Regular Forces, is charged with—

*When on active service, without orders from his superior officer, leaving the*  
*ranks on pretence of taking wounded men to the rear,*  
in that he, at , on , when in the ranks, and during an attack  
upon , left the ranks without orders from his superior  
officer, on pretence of taking to the rear Lieutenant who was  
wounded. Sec. 5 (1),  
Army Act.

#### No. 4.

##### CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—

*When on active service, wilfully destroying property without orders from his*  
*superior officer,*  
in that he, on , in , and encamped near the village  
of , without orders from his superior officer, wilfully set fire to  
a dwelling-house, situate in the said village. Sec. 5 (2),  
Army Act.

## No. 5.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 6 (1) (b), [When on active service] by discharging firearms, intentionally occasioning  
 Army Act. false alarms on the march, in that he, on , when on the march with his Battalion between and , by intentionally discharging his rifle occasioned a false alarm.

## No. 6.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 6 (1) (k), When a soldier acting as sentinel [on active service] leaving his post before he  
 Army Act. was regularly relieved, in that he, at , on , after being posted as a sentry on No. Post, Guard, left his post without having been regularly relieved.

## No. 7.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 6 (2) (a), When on active service, leaving his commanding officer to go in search of  
 Army Act. plunder, in that he, on , when belonging to a force in military occupation of , and when marching with his battalion under Lieutenant-Colonel , through the town of , left his commanding officer, and went in search of plunder.

## No. 8.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 6 (2) (b), [When on active service] forcing a safeguard,  
 Army Act. in that he, at , on , in , forced his way past Serjeant into a house in street, at , in which, by orders of the General Officer Commanding, the said Serjeant had been placed as a safeguard, for the protection of the occupants and the property there'in.

## No. 9.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 6 (2) (c), [When on active service] forcing a sentinel,  
 Army Act. in that he, at , on , after being warned by the sentry on No. Post, Guard, not to pass, passed the said sentry.

## No. 10.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 6 (2) (d), When on active service, breaking into a house in search of plunder,  
 Army Act. in that he, at , on , broke into a house, No. in street, and entered it in search of plunder.

## No. 11.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
*When a soldier acting as sentinel [on active service] sleeping on his post,* Sec. 6 (2) (d),  
 in that he, at , on , between 1 and 2 a.m., when sentry on Army Act.  
 No. Post, Guard, was asleep.

## No. 12.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
*Impeding a non-commissioned officer legally exercising authority under the* Sec. 6 (3) (d),  
*Provost-Marshal,* Army Act.  
 in that he, at , on , when Serjeant of the Military  
 Foot Police, a non-commissioned officer legally exercising authority under  
 the Provost-Marshal, was endeavouring to arrest a soldier, impeded the said  
 Serjeant by tripping him.

## No. 13.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
*Doing violence to a person bringing provisions to the forces,* Sec. 6 (3) (d),  
 in that he, at , on , assaulted one , a sutler, who was Army Act.  
 bringing into camp bread and vegetables for the use of the troops.

## No. 14.

## CHARGE-SHEET.

The accused, A.B., sutler, being subject to military law as a soldier by  
 reason of accompanying His Majesty's troops on active service in [Egypt], is  
 charged with—  
*Committing an offence against the property of a resident in the country in* Sec. 6 (3) (d),  
*which he was serving,* Army Act.  
 in that he, at , in [Egypt], on , maliciously damaged a  
 motor car belonging to of , a resident in [Egypt], by  
 thrusting a knife into one of the tyres.

## No. 15.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
*Committing an offence against the person of an inhabitant of the country in* Sec. 6 (8) (d),  
*in which he was serving,* Army Act.  
 in that he, when serving in [Egypt], at , on , assaulted  
 of ; an inhabitant of [Egypt].

## No. 16.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Causing a mutiny in His Majesty's military forces,* First  
 in that he, at , on , in his barrack room addressed charge:  
 Serjeant , Private , and other soldiers, Sec. 7 (1),  
 Regiment, there assembled, in mutinous language, by advising them not to Army Act  
 turn out at commanding officer's parade at 10 o'clock next day, in conse-  
 quence of which language they, the said Serjeant and Private  
 , and other soldiers of the said Battalion, did not turn out  
 for the said parade.

Second  
charge.

Sec. 7 (2),  
Army Act.

*Endeavouring to persuade a person in His Majesty's military forces to join in a mutiny,*  
in that he, at , on ; endeavoured to persuade  
Lance-Corporal ; Battalion, Regiment, to join in a  
mutiny, and not to mount guard, for which duty he the said Lance-Corporal,  
had been duly warned.

#### No. 17.

(Joint Trial.)

#### CHARGE-SHEET.

Sec. 7 (3),  
Army Act.

The accused persons, No. , Private , Battalion,  
Regiment, and No. , Private , Battalion,  
Joining, soldiers of the Regular Forces, are charged with—  
*Joining in a mutiny in forces belonging to His Majesty's military forces,*  
in that they, at , on [or about] , joined in a mutiny by  
combining among themselves [and with other soldiers of the ]  
to resist and offer violence to their superior officers in the execution of their  
duty.

*Note.*—This charge is equally applicable to the case where a single person is charged.

#### No. 18.

#### CHARGE-SHEET.

Sec. 7 (4),  
Army Act.

The accused, No. , Bombardier , Battery, Royal  
Artillery, a soldier of the Regular Forces, is charged with—  
*After coming to the knowledge of an intended mutiny in forces belonging to*  
*His Majesty's military forces, failing to inform without delay his commanding*  
*officer of the same,*  
in that he, at , on , having been present in the public-house  
known as the Red Lion, where Bombardier , Gunner  
and other soldiers of , Battery, Royal Artillery, in his hearing, agreed  
to cut up and destroy the harness belonging to the said Battery, failed to  
inform his commanding officer thereof.

#### No. 19.

#### CHARGE-SHEET.

Sec. 8 (1),  
Army Act.

The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
*Striking his superior officer, being in the execution of his office,*  
in that he, at , on , struck with his fist in the face Corporal  
Regiment, who was at the time in command  
of an escort taking soldiers in custody to the guard-room.

#### No. 20.

#### CHARGE-SHEET.

Sec. 8 (2),  
Army Act.

The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
*[When on active service] offering violence to his superior officer,*  
in that he, at , on , when checked by Corporal  
Regiment, attempted to strike the said corporal.

#### No. 21.

#### CHARGE-SHEET.

Sec. 8 (2),  
Army Act.

The accused, No. , Private , Battalion, Regiment,  
a soldier of the Regular Forces, is charged with—  
*[When on active service] using threatening language to his superior officer,*  
in that he, at , on , after having been awarded a punish-  
ment by his commanding officer, said to Serjeant  
Regiment, "I'll be revenged on you for this, yet."

## No. 22.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Disobeying in such manner as to show a wilful defiance of authority, a lawful* Sec. 9 (1),  
*command given personally by his superior officer, in the execution of his office,* Army Act.  
 in that he, at , on , when personally ordered by  
 Captain , Regiment, upon commanding  
 officer's parade, to take up his rifle and fall in, did not do so, divesting himself  
 at the same time of his waist-belt, and saying, "I'll soldier no more, you  
 may do what you please."

## No. 23.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] disobeying a lawful command given by his superior* Sec. 9 (2),  
*officer,* Army Act.  
 in that he, at , on , did not leave the regimental institute  
 when ordered to do so by Corporal , Regiment.

## No. 24.

## CHARGE-SHEET.

The accused, Captain , Battalion, Regiment, an  
 officer of the Regular Forces, is charged with—  
*When concerned in a quarrel, refusing to obey an officer who ordered him into* Sec. 10 (1),  
*arrest,* Army Act.  
 in that he, on , in the ante-room of the officers' mess  
 at , after having quarrelled with and struck Lieutenant  
 Regiment, on being ordered into arrest  
 by Lieutenant , Regiment, refused  
 to obey the order.

## No. 25.

## CHARGE-SHEET.

The accused, No. , Corporal , Dragoons, a soldier  
 of the Regular Forces, is charged with—  
*Striking a person in whose custody he was placed,* Sec. 10 (2),  
*in that he, at , on , when placed by Serjeant ,* Army Act.  
 9th Dragoons, in the custody of Police Constable , struck  
 with his waist-belt, on the head, the said Police Constable.

## No. 26.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
*Resisting an escort whose duty it was to have him in charge,* Sec. 10 (3),  
*in that he, at , on , while under escort of Private ,* Army Act.  
 and Private , Regiment,  
 resisted the escort by kicking and struggling.

## No. 27.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
*Breaking out of barracks,* Sec. 10 (4),  
*in that he, at , on , broke out of barracks, when his duty* Army Act.  
 required him to be in barracks.

*Note.*—If the soldier was confined to barracks by any special duty the duty should be specified, e.g., "when a defaulter," or "when under open arrest."

## No. 28.

## CHARGE-SHEET.

The accused, No. , Serjeant Hussars, a soldier of the Regular Forces, is charged with—  
*Neglecting to obey camp orders,*  
 Sec. 11, in that he, at , on , bathed in the river , above  
 Army Act. camp, contrary to a camp order [No. ] dated , directing all persons to abstain from bathing in that part of the river.

## No. 29.

## CHARGE-SHEET.

The accused, W. R., being a person subject to military law as an officer by reason of his accompanying His Majesty's Forces on active service in [Afghanistan] and holding a pass entitling him to be treated on the footing of an officer, is charged with—  
*Neglecting to obey camp orders,*  
 Sec. 11, in that he, on , entered the village of , contrary to a camp  
 Army Act. order [No. ], dated , directing all persons to abstain from entering that village.

## No. 30.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] deserting His Majesty's service,*  
 Sec. 12(1)(a), in that he, at , on , absented himself  
 Army Act. from , Regiment, until apprehended at on , by the civil power, on board the steamer which was about to leave the harbour for

## No. 31.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] attempting to desert His Majesty's service,*  
 Sec. 12(1)(a), in that he, at , on , absented himself from his battalion  
 Army Act. and concealed himself in a back room of a house situate in , and when apprehended by the military police on the same day was partly dressed in plain clothes.

*Note.*—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service."

## No. 32.

## CHARGE-SHEET. \*

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Deserting His Majesty's service,*  
 Sec. 12(1)(a), in that he, at , on , absented himself  
 Army Act. from , Regiment, until apprehended by the civil power at , on , dressed in plain clothes.

## No. 33.

## CHARGE-SHEET.

The accused, No. , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—  
*[When under orders for active service] deserting His Majesty's service,*  
 Sec. 12(1)(a), in that he, at , on , when under orders for embarkation [for active service] absented himself without leave from the  
 Army Act. Regiment, from the of until the of with intent to avoid such embarkation.



## No. 34.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Fraudulent enlistment,* Sec. 13 (1),  
 in that he, at , on , when belonging to Army Act.  
 the Regiment, without having fulfilled the conditions  
 enabling him to enlist, enlisted into His Majesty's Regular Forces for general  
 service [or for service in the Regiment], thereby obtaining a  
 free kit of necessaries, value

## No. 35.

## CHARGE-SHEET.

The accused, No. , Private , of the  
 Battalion, Regiment, a soldier of the Territorial Army when embodied,  
 is charged with—  
*Fraudulent enlistment,* Sec. 13 (1),  
 in that he, at , on , when belonging to the Territorial Army Act.  
 Army called out on embodiment, without having fulfilled the conditions  
 enabling him to enlist, enlisted into His Majesty's Regular Forces for service  
 in the Regiment, thereby obtaining a free kit of necessaries,  
 value

## No. 36.

## CHARGE-SHEET.

The accused, No. , Trooper , Dragoons, a soldier  
 of the Regular Forces, is charged with—  
*Assisting a person subject to military law to desert His Majesty's service,* Sec. 14 (1),  
 in that he, at , on [or about] , well knowing that Army Act.  
 Private Regiment, was about to desert,  
 provided him with a suit of plain clothes.

## No. 37.

## CHARGE-SHEET.

The accused, No. , Trooper , Lancers, a  
 soldier of the Regular Forces, is charged with—  
*Absenting himself without leave,* Sec. 15 (1),  
 in that he, at , absented himself without leave from Army Act.  
 tattoo roll call on till 7.30 a.m. on

## No. 38.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, First  
 a militiaman (supplementary reservist) out for training, is charged with—  
*Absenting himself without leave,* Sec. 15 (1),  
 in that he, at , when his battalion was out for training, absented Army Act.  
 himself at 9 a.m. on till 11.15 a.m. on  
*Losing by neglect his equipment and regimental necessaries,* Second  
 in that he, at , on or about , was deficient of one charge.  
 waist-belt value four shillings and tenpence, one pair of socks value eight- Sec. 24 (2),  
 pence, one shirt value four shillings, and one razor and case value fivepence. Army Act.

*Note.*—All articles of clothing and necessaries issued to a militiaman (supplementary reservist) are the property of the public. The value of such articles should therefore be given in the particulars of the charge, and stoppages should form part of the sentence.

## No. 39.

## CHARGE-SHEET.

The accused, No. , Gunner , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—  
 Sec. 15 (2); *Failing to appear at the place of parade appointed by his commanding officer,*  
 Army Act. in that he, at , on , when in billet at that place, failed to appear at the market square in that town at a.m., the place of parade duly appointed by , his commanding officer.

*Note.*—When the charge is laid under this paragraph it is necessary to prove that the place of parade specified in the particulars is the place appointed by the C.O., and that the hour of such parade has also been appointed. When a C.O. has appointed a place and time for parades generally, and this has been duly notified so that it is, or ought to be, within the knowledge of the accused, it is not necessary to prove that the place and time for the particular parade was notified, provided it comes within the general order.

## No. 40.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 15 (3), *When in camp being found beyond the limits fixed by regimental orders without*  
 Army Act. a pass or written leave from his commanding officer, in that he, when encamped near Exeter, was found on , in Topsham, a place beyond the limits fixed by regimental orders, without a pass or written leave from his commanding officer.

## No. 41.

## CHARGE-SHEET.

The accused, Lieutenant , Regiment, an officer of the Regular Forces, is charged with—  
 Sec. 16, *Behaving in a scandalous manner unbecoming the character of an officer and*  
 Army Act. a gentleman, in that he, at , on , in payment of his mess account, gave Mr. , the mess man, a cheque for £31 (thirty-one pounds) on Lloyds Bank, Ltd., Cox's and King's Branch, Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented.

## No. 42.

## CHARGE-SHEET.

The accused, Captain , Regiment, an officer of the Regular Forces, is charged with—  
 Sec. 16, *Behaving in a scandalous manner unbecoming the character of an officer and*  
 Army Act. a gentleman, in that he, at , on , [or between and ], wrote and sent to his commanding officer, Lieut.-Colonel , Regiment, an anonymous letter in which he made use of the following words:—  
 "By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth. Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's inspection."

## No. 43.

## CHARGE SHEET.

The accused, Captain , Battalion; Regiment, an officer of the Regular Forces, is charged with—  
 Sec. 17, *When concerned in the care of regimental money, embezzling the same,*  
 Army Act. in that he, at , on or about , when as President of the Mess Committee of the Officers' Mess, Battalion, Regiment, he was concerned in the care of regimental money, that is to

say, fifteen pounds, in money received by him for and on account of the said Mess from , applied the said sum of fifteen pounds to his own use, with intent to defraud.

No. 44.

CHARGE-SHEET.

The accused, Captain , Battalion, Regiment, an officer of the Regular Forces, is charged with—  
*When concerned in the care of public money, fraudulently misapplying the same,* Sec. 17,  
 in that he, at , on , when as officer commanding Army Act.  
 Company, Battalion, Regiment, he was concerned in  
 the care of public money, applied twenty pounds, ten shillings, part thereof,  
 to his own use with intent to defraud.

No. 45.

CHARGE-SHEET.

The accused, Captain , Quartermaster, Royal Army Medical Corps, an officer of the Regular Forces, is charged with—  
*When charged with the care of public goods, fraudulently misapplying the same,* Sec. 17,  
 in that he, at , on [or about] , when Army Act.  
 charged with the care of ten rugs, of the value of , the property  
 of the public, sold the said rugs to , with intent  
 to defraud.

No. 46.

CHARGE-SHEET.

The accused, No. , Corporal , Royal Army Ordnance Corps, a soldier of the Regular Forces, is charged with—  
*When concerned in the care of public goods, stealing the same,* Sec. 17,  
 in that he, at , on [or about] , when as storeman of Army Act.  
 the stores, he was concerned in the care of ordnance stores, stole three  
 Webley pistols value each, part of the said stores.

No. 47.

CHARGE-SHEET.

The accused, No. , Staff Serjeant Royal Army Service Corps, a soldier of the Regular Forces, is charged with—  
*When concerned in the distribution of public goods, fraudulently misapplying the same,* Sec. 17,  
 in that he, at , on when concerned in the Army Act.  
 distribution of coals, public goods, to Battalion,  
 Regiment, issued four sacks thereof, weighing two cwt. each or thereabout,  
 of a total value of , or thereabout, to , a  
 person not entitled to receive them, with intent to defraud.

No. 48.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Malingering,* Sec. 18(1),  
 in that he, at , on , [between Army Act.  
 and ], with the intention of evading his duties as a soldier,  
 counterfeited dumbness.

No. 49.

CHARGE-SHEET.

The accused, No. ; Trooper , Hussars, a soldier of the Regular Forces, is charged with—  
*Feigning infirmity,* Sec. 18(1),  
 in that he, at , on , pretended to the Medical Officer Army Act.  
 in charge of troops that he was suffering from a stiff knee which he could not bend, whereas, as he well knew, he was not so suffering.

## No. 50.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
 Sec. 18(2), *Wilfully maiming himself with intent thereby to render himself unfit for*  
 Army Act. *service,*  
 in that he, at , on , when sentry on No.  
 Post, Guard, by discharging his rifle wilfully maimed himself  
 by blowing off the fore and middle fingers of his right hand, with intent  
 thereby to render himself unfit for service.

## No. 51.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
 Sec. 18(3), *Being wilfully guilty of misconduct by means of which misconduct he delayed*  
 Army Act. *the cure of disease,*  
 in that he, at , on , [between  
 and ], when under medical treatment for syphilitic sores,  
 tampered with the said sores by the secret application of , thereby  
 delaying the cure of his disease.

## No. 52.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 18(3), *Wilfully disobeying orders by means of which disobedience he delayed the cure*  
 Army Act. *of disease [or infirmity],*  
 in that he, at , on , when under medical treatment for  
 opthalmia refused to submit to the treatment, viz., the application of lotion,  
 deemed advisable to effect his cure, and as such ordered by  
 in medical charge of the accused, thereby delaying the cure of his disease.

## No. 53.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 18(4), *Stealing public money,*  
 Army Act. in that he, at , on , stole two pounds, ten shillings and four-  
 pence, public money, from a cash-box in the orderly room of the  
 Battalion, Regiment.

## No. 54.

## CHARGE-SHEET.

The accused, No. , Trooper (Lance-Corporal)  
 Hussars, a soldier of the Regular Forces, is charged with—  
 Sec. 18(4), *Stealing public money,*  
 Army Act. in that he, at , on , when entrusted by Company  
 Serjeant-Major , Battalion, Regiment, with  
 two pounds, ten shillings, public money, in a sealed envelope, for delivery  
 to Captain , fraudulently converted the said money to his own use.

*Note.*—The particulars of this charge allege stealing as a "ballet."

## No. 55.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 First *Stealing goods, the property of a person subject to military law,*  
 charge. in that he, at , on , stole a watch, the property of No.  
 Sec. 18(4), Serjeant , Regiment, a person subject to  
 Army Act. military law.

*Receiving, knowing them to be stolen, goods, the property of a person subject to military law,* Second charge (alternative).  
 in that he, at , on , did receive a watch, the property of the said No. , Serjeant Regiment, a Army Act.  
 person subject to military law, which he (the accused) knew to have been stolen.

No. 56.

## CHARGE-SHEET.

The accused, No. , Colour-Serjeant (Company Quartermaster-Serjeant) Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Embezzling money belonging to a regimental mess,* Sec. 18 (4), Army Act.  
 in that he, at , on , having as Treasurer of the Serjeants' Mess of the Regiment received from Serjeant , eighteen shillings for and on behalf of the said Mess, fraudulently embezzled the same.

No. 57.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act,* Sec. 18 (5), Army Act.  
 in that he, at , on [or about] , when employed as caterer of the Serjeants' Mess, Regiment, with intent to defraud, added water to a cask of ale belonging to the stores of the said Mess.

No. 58.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act,* Sec. 18 (5), Army Act.  
 in that he, at , on , with intent to defraud, presented to his company commander for signature by him as correct the Pay and Mess Roll for the month of containing an entry purporting to show that a casual payment of £ had been made to No. , Corporal , on , well knowing that no such payment had in fact been made (and thereby obtained £ to which he was not entitled).

No. 59.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act,* Sec. 18 (5), Army Act.  
 in that he, at , on [or about] , with intent to defraud, presented to Company Serjeant-Major , Battalion, Regiment, in support of a claim for marriage allowance, a certified copy of an entry of birth, purporting to relate to him, the accused, in which the date set out under the heading "When and where born" had been altered from to , as he, the accused, well knew, and thereby attempted to obtain marriage allowance to which he was not entitled.

No. 60.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Disgraceful conduct of a cruel kind,* Sec. 18 (5), Army Act.  
 in that he, at , on , cruelly ill-treated a cat by throwing it against a wall.

## No. 61.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*[When on active service] drunkenness,*  
 Sec. 19, in that he, at , on , [when on duty (*specify duty*)  
 Army Act. or having been previously warned for duty (*specify duty*)], was drunk.  
*Note.*—If the offender has been warned for special duty, *s.g.*, night picket or in aid of the civil power, the nature of that special duty should be stated.

## No. 62.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 20 (1), *When in command of a picket wilfully releasing, without proper authority,*  
 Army Act. *a person committed to his charge,*  
 in that he, at , on , when in command of a picket  
 patrolling the town, without authority released Private  
 Regiment, a person who had been committed to his charge by Provost-  
 Serjeant

## No. 63.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 20 (1), *When in command of a guard releasing, without proper authority, a person*  
 Army Act. *committed to his charge,*  
 in that he, at , on , when in command of the  
 barrack guard, without authority released Corporal  
 Battalion, Regiment, a person committed to his charge.

## No. 64.

## CHARGE-SHEET.

The accused, No. , Corporal , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 20 (2), *Wilfully allowing to escape a person committed to his charge,*  
 Army Act. in that he, at , on , when in command of an escort  
 conducting to , Private , Battalion,  
 Regiment, a person committed to his charge, wilfully allowed the said person  
 to escape.

*Note.*—Upon this charge it is competent for a court-martial to find the accused guilty of  
 "without reasonable excuse, allowing to escape a person committed to his charge." Sec. 66  
 (5), Army Act.

## No. 65.

## CHARGE-SHEET.

The accused, No. , Corporal , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
 Sec. 20 (2), *Without reasonable excuse allowing to escape a person committed to his charge,*  
 Army Act. in that he, at , on , when conducting to his  
 Battalion, Private , Battalion, Regiment,  
 a person committed to his charge [allowed a crowd to assemble round the said  
 person without taking reasonable means to prevent it, and thus] permitted  
 the escape of the said person.

## No. 66.

## CHARGE-SHEET.

The accused, No. , Trooper , Dragoon Guards, a  
 soldier of the Regular Forces, is charged with—  
 Sec. 22, *When in confinement escaping,*  
 Army Act. in that he, at , on , when in confinement  
 (in the detention barrack) at , escaped.

## No. 67.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*When in lawful custody attempting to escape,* Sec. 22,  
 in that he, at , on , when proceeding under Army Act.  
 escort to , broke away from his escort and attempted to  
 escape.

## No. 68.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Making away with by pawning his clothing and regimental necessaries,* First  
 in that he, at , on [or about] , pawned to charge.  
 for the sum of five shillings, one pair of ankle boots, two brushes and one Sec. 24 (1),  
 flannel shirt, articles of his clothing, and regimental necessaries. Army Act.  
*Losing by neglect his clothing and regimental necessaries,* Second  
 in that he, at the place and on [or about] the day aforesaid, was deficient charge  
 of the articles of his clothing and regimental necessaries specified in the first (alternative).  
 charge. Sec. 24 (2),  
 Army Act.

*Note.*—If the accused sold his clothing, &c., this same charge can be used with the substitution of "selling" for "pawning."

The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

## No. 69.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Losing by neglect his equipments, clothing, and regimental necessaries,* Sec. 24 (2),  
 in that he, at , on [or about] , was deficient of one Army Act.  
 waist-belt, value , one khaki drill frock, two towels, and two  
 pairs of socks.

## No. 70.

## CHARGE-SHEET.

The accused, No. , Colour-Serjeant (Company Quartermaster-Serjeant)  
 Battalion, Regiment, a soldier of the  
 Regular Forces, is charged with—  
*In a document made by him knowingly making a fraudulent statement,* Sec. 25 (1),  
 in that he, at , on [or about] , [between Army Act.  
 and ], in his capacity as Company Quartermaster-Serjeant of  
 Company, Regiment, fraudulently entered in his cash account for  
 the month of , 19 , the following item—Washing bills, three pounds  
 four shillings and two pence, whereas the actual amount paid by him in  
 respect of such bills was two pounds fifteen shillings and four pence.

## No. 71.

## CHARGE-SHEET.

The accused, Lieutenant , Battalion, Regiment,  
 an officer of the Regular Forces, is charged with—  
*In a report signed by him knowingly making a false statement,* Sec. 25 (1),  
 in that he, at , on , in the orderly officer's report signed by Army Act.  
 him stated that he had turned out the guard at , on , well  
 knowing that he had not in fact turned out the guard at that time.

## No. 72.

## CHARGE-SHEET.

The accused, No. , Colour-Serjeant (Company Quartermaster-Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 25 (1),  
Army Act.

*In a pay list of the contents of which it was his duty to ascertain the accuracy knowingly making a fraudulent statement,* in that he, at , on [or about] , when acting as pay serjeant of Company, Battalion, Regiment, in the Pay and Mess Roll of the said Company for the month of , of the contents of which it was his duty to ascertain the accuracy, made an entry purporting to show that on the a casual payment of £ had been made to No. , Private , Battalion, Regiment, well knowing that such payment had not been made and with intent to defraud.

## No. 73.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battery, Brigade, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec. 25 (1),  
Army Act.

*In a book made by him knowingly making an omission with intent to defraud,* in that he, at , on [or about] , when caterer of the Serjeants' Mess of the Brigade, Royal Artillery, with intent to defraud, omitted to make an entry in the caterer's daily stock-book kept by him recording the receipt into the stock of the said Mess of 18 gallons of India Pale Ale delivered by Messrs. on

## No. 74.

## CHARGE-SHEET.

The accused, No. , Colour-Serjeant (Company Quartermaster-Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 25 (2),  
Army Act.

*Knowingly and with intent to defraud, altering a document which it was his duty to preserve,* in that he, at , on [or about] , when Company Quartermaster-Serjeant of Company, Battalion, Regiment, he had charge of a certain detachment monthly pay sheet (Army Form N 1510) for the month of , with intent to defraud, altered the figures '£1 0s. 0d.' in the first payment column of the said form set against the several names of Lance-Corporal and Private , and changed the said figures in each case into '£2 0s. 0d.'

## No. 75.

## CHARGE-SHEET.

The accused, No. , Colour-Serjeant (Company Quartermaster-Serjeant) , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 25 (2),  
Army Act.

*Knowingly and with intent to defraud making away with a document which it was his duty to preserve,* in that he, at , on [or about] , with intent to defraud, burned the Pay and Mess Roll of Company, Regiment, for the month of , 19 , which it was his duty to preserve.

## No. 76.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 27 (1),  
Army Act.

*Making a false accusation against a soldier knowing such accusation to be false,* in that he, at , on , when appearing before Captain , Regiment, used language to the effect following, that is to say: 'The Company Serjeant-Major is not fair in taking men for duty, and no one in the company can get on if he does not give him a bribe,' meaning thereby the Company Serjeant-Major of his company, Regiment, well knowing the said statement to be false.



## No. 77.

## CHARGE-SHEET.

The accused, No. , Trooper , Dragoons, a soldier of the Regular Forces, is charged with—

*Falsely stating to his commanding officer that he had been guilty of desertion, Sec. 27 (3), in that he, at , on , stated to , his Army Act, commanding officer, that he was a deserter from , well knowing such statement to be false.*

## No. 78.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Willfully giving false evidence when examined on oath before a court-martial, Sec. 29, in that he, at , on , when examined as a witness Army Act, before a court-martial, stated on oath, that Private Regiment, the person charged before the said court, was in his, the witness's, company in his barrack-room, at , between 4 and 5 p.m. on , well knowing such statement to be false.*

## No. 79.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*After having been discharged with disgrace from a part [parts] of His Majesty's Sec. 32, military forces, enlisting in the Regular Forces without declaring the circum- Army Act, stances of his discharge [discharges], in that he, at , on , after having been discharged with ignominy from , [for misconduct from and on conviction for felony from ], enlisted in His Majesty's Regular Forces for general service [for service in the Regiment], without declaring the circumstances of his discharge [discharges].*

## No. 80.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Making a wilfully false answer to a question set forth in the attestation paper Sec. 88, which was put to him by or by direction of the justice before whom he appeared for Army Act, the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace [or recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [or for service in the Regiment]— to the question put to him, "Have you ever served in the Army?" answered "No"; whereas, he had served, as he well knew, in the Regiment.*

## No. 81.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

*Making a wilfully false answer to a question set forth in the attestation paper Sec. 88, which was put to him by or by direction of the justice before whom he appeared Army Act, for the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace [or recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [or for service in the Regiment]— to the question put to him, "Do you now belong to the Royal Navy?" answered "No"; whereas, he was serving, as he well knew, in H.M.S. "*

## No. 82.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a militiaman (supplementary reservist), out for training, is charged with—

Sec. 33,  
Army Act.

*Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested.*

in that he, at , on , when belonging to the supplementary reserve, when he appeared before A.B., a Justice of the Peace [or recruiting staff officer, having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for the supplementary reserve, to the question put to him, "Do you now belong to the Army Reserve?" answered "No"; whereas he belonged, as he well knew, to the supplementary reserve of the Regiment.

*Note.*—If the reservist is not subject to military law when the charge is preferred against him he should not be charged under this section, but should be dealt with by a civil court under A.A. 90, and s. 18 (1) Reserve Forces Act, 1882.

## No. 83.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 33,  
Army Act.

*Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested.*

in that he, at , on , when he appeared before A.B., a Justice of the Peace [or recruiting staff officer having under Section 94 of the Army Act the authority of a Justice of the Peace], for the purpose of being attested for general service [or for service in the Regiment], to the question put to him, "Do you now belong to the Army Reserve?" answered "No"; whereas he belonged, as he well knew, to the Army Reserve, and by his enlistment obtained a free kit of necessaries, value

## No. 84.

## CHARGE-SHEET.

The accused, No. , Gunner , Battery, Royal Artillery, a soldier of the Regular Forces, is charged with—

Sec. 38 (2),  
Army Act.

*Attempting to commit suicide,*  
in that he, at , on , with intent to commit suicide, cut his throat with a razor.

## No. 85.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 40,  
Army Act.

*An act to the prejudice of good order and military discipline.*  
in that he, at , on , when sentry over soldiers in custody while employed on fatigue duty in the barrack yard, improperly gave to No. , Private , Regiment, one of the said soldiers in custody, a pipe and some tobacco.

## No. 86.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—

Sec. 40,  
Army Act.

*Conduct to the prejudice of good order and military discipline.*  
in that he, at , on , on returning as a soldier in custody to the guard-room on remand, said, "What the do I care (being the commanding officer of the accused). He for me," or words to that effect.  
may go to

## No. 87.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Conduct to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on , became unfit for duty by Army Act.  
 reason of previous indulgence in alcoholic stimulants.

## No. 88.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*An act to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on , made use of [or was in possession of] Army Act.  
 a document purporting to be a genuine pass [to be signed by ],  
 well knowing that it was not genuine [so signed].

## No. 89.

## CHARGE-SHEET.

The accused, No. , Corporal , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Neglect to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on , after being duly warned by Company Army Act.  
 Serjeant-Major to parade the regimental defaulters at 3 p.m. on  
 that day, neglected to do so.

*Note.*—This form of charge is applicable when disobedience is not imputed.

## No. 90.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Conduct to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on , was improperly in possession of Army Act.  
 a pair of boots, the property of No. , Private , Battalion,  
 Regiment.

## No. 91.

## CHARGE-SHEET.

The accused, No. , Corporal , Royal Corps of Signals,  
 a soldier of the Regular Forces, is charged with—  
*Conduct to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on , when on duty as wireless and Army Act.  
 telephone operator, was asleep.

## No. 92.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Neglect to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on , so negligently handled a rifle as to Army Act.  
 cause it to be discharged and thereby injured his left foot and rendered himself  
 temporarily unfit for service.

## No. 93.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
*Conduct to the prejudice of good order and military discipline,* Sec. 40,  
 in that he, at , on [or about] , sent to his commanding Army Act  
 officer a document purporting to be a certificate of Dr. of  
 to the effect that he, the accused, was unfit to travel, well knowing the same  
 not to be genuine.

## No. 94.

## CHARGE-SHEET.

The accused, Captain , Battery, Brigade, Royal Artillery, an officer of the Regular Forces, is charged with—  
*Neglect to the prejudice of good order and military discipline,*  
 Sec. 40, in that he, at , between the and , when as  
 Army Act. officer in command of Battery, Brigade, Royal Artillery, he was  
 concerned in the care of public money, so negligently performed his duties  
 as to be unable to account for £ , part of the said money.

## No. 95.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 41, *When on active service committing a civil offence, that is to say, murder,*  
 Army Act. in that he, at [Ismaïlia,] on [or about] , when on active service,  
 murdered one Humantoo, a native of the East Indies, a camp follower.

## No. 96.

## CHARGE-SHEET.

The accused, No. , Private (Lance-Corporal) ; Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 41, *Committing a civil offence, that is to say, manslaughter,*  
 Army Act. in that he, at [Alexandria] on , unlawfully killed No. ,  
 Private , Battalion, Regiment.

## No. 97.

## CHARGE-SHEET.

The accused, No. , Rifleman , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 41, *Committing a civil offence, that is to say, burglary, with intent to commit a*  
 Army Act. *felony contrary to Section 25 (1) of the Larceny Act, 1916,*  
 in that he, at , on , during the night, did break and enter the  
 dwelling-house of , with intent to commit a felony therein.

## No. 98.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 41, *Committing a civil offence, that is to say, housebreaking and larceny contrary*  
 Army Act. *to Section 26 (1) of the Larceny Act, 1916,*  
 in that he, at , on , did break and enter the dwelling-house  
 of , and did steal therein one watch, the property of , [the  
 said watch being of the value of £ . ]

*Note.*—This form of charge is appropriate when a dwelling house is broken into and a felony committed therein by day; or when a shop, warehouse, office, store, garage, factory, pavilion, or workshop, or any building belonging to His Majesty or to any Government Department, is broken into and a felony committed at any time, during the night or day.

## No. 99.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 41, *Committing a civil offence, that is to say, housebreaking with intent to commit*  
 Army Act. *a felony contrary to Section 27 (2) of the Larceny Act, 1916,*  
 in that he, at Barracks, on , did break and enter the  
 Quartermaster's Store of the Battalion, Regiment, with  
 intent to commit a felony therein.

*Note.*—This offence may be committed at any time during the night or day, and the charge is appropriate where a completed theft has not in fact taken place. (See note to preceding specimen charge as to class of buildings.)

## No. 100.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, robbery with violence contrary to* Sec. 41,  
*Section 23 (1) (b) of the Larceny Act, 1916,* Army Act.  
 in that he, at , on , robbed A. B. of a watch and at the  
 time of such robbery did use personal violence to the said A. B.

## No. 101.

## CHARGE-SHEET.

The accused, No. , Bombardier , Battery, Brigade, Royal Artillery, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, wounding with intent, contrary to* Sec. 41,  
*Section 18 of the Offences against the Person Act, 1861,* Army Act.  
 in that he, at , on , wounded No. , Private , Battalion, Regiment, with intent to do him grievous bodily harm.

## No. 102.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, common assault,* Sec. 41,  
 in that he, at , on , assaulted Mr. of Army Act.  
 by striking him with a stick.

## No. 103.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, stealing,* First charge,  
 in that he, at , on , stole half a pound of tobacco or Sec. 41,  
 thereabout, value , the property of Army Act.  
*Committing a civil offence, that is to say, receiving stolen goods,* Second  
 in that he, at , on , did receive half a pound of tobacco charge  
 or thereabout, value , the property of the said (alternative)  
 knowing the same to have been stolen. Sec. 41,  
 Army Act.

## No. 104.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, fraudulent conversion of property,* Sec. 41,  
 contrary to Section 20 (1) (iv) (a) of the Larceny Act, 1916, Army Act.  
 in that he, at , on , fraudulently converted to his own use  
 and benefit certain property, that is to say, a postal packet addressed to  
 containing two one pound currency notes, entrusted to him by , in  
 order that he, the accused, might deliver the same to the civil postal authorities  
 for registration and despatch by post.

## No. 105.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—  
*Committing a civil offence, that is to say, obtaining goods by false pretences,* Sec. 41,  
 contrary to Section 32 (1) of the Larceny Act, 1916, Army Act.  
 in that he, at , on , with intent to defraud, obtained from  
 A. B., a leather attaché case of the value of , by falsely pretending  
 that he, the accused, was a servant to Captain , Battalion,  
 Regiment, and that he, the accused, had been sent by the said  
 Captain , to the said A. B. for the said attaché case, and that he,  
 the accused, was then authorised by the said Captain to receive  
 the said attaché case on his behalf.

## No. 106.

## CHARGE-SHEET.

The accused, No. , Serjeant , Battalion,  
 Regiment, a soldier of the Regular Forces, is charged with—  
 Sec. 41, *Committing a civil offence, that is to say, forgery,*  
 Army Act. in that he, at , on [or about] , with intent to defraud,  
 forged the name of Captain to a post office order for four pounds  
 two shillings and sixpence [and thereby obtained the sum of four pounds two  
 shillings and sixpence].

## No. 107.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment,  
 a soldier of the Regular Forces, is charged with—  
 Sec. 41, *Committing a civil offence, that is to say, uttering a forged document contrary*  
 Army Act. *to Section 6 (1) of the Forgery Act, 1913,*  
 in that he, at , on [or about] , uttered a certain forged cheque  
 purporting to be a cheque drawn on Bank, Limited, Branch,  
 for £ , in favour of , and to be signed by , knowing  
 the same to be forged and with intent to defraud.

## No. 108.

## CHARGE-SHEET.

The accused, [name], is charged with having, while being No. ,  
 Serjeant, of the Battalion, Regiment, a soldier of the  
 Regular Forces, committed the following offence, namely—  
 Sec. 17, *When concerned in the care of regimental money, fraudulently misapplying*  
 Army Act. *the same,*  
 in that he, at , on [or about] , when as caterer of the  
 Serjeants' Mess of the Battalion, Regiment, he was concerned  
 in the care of regimental money, to wit, a sum of £ , being the proceeds of  
 sale of certain stock sold by him on the , applied £ ,  
 part thereof, to his own use with intent to defraud.

*Note.*—This form of charge is applicable in cases where an offence has been committed by  
 a person while subject to military law, and after he has ceased to be so subject he is tried  
 by court-martial for that offence under the provisions of Section 158 of the Army Act.

## No. 109.

## CHARGE-SHEET.

The accused, No. , Private , Battalion,  
 Regiment, a soldier of the Territorial Army out for annual  
 training, is charged with—  
 Sec. 11, *After having been discharged with disgrace from a part [parts] of His Majesty's*  
 T.R.F. Act. *forces, enlisting in the Territorial Army without declaring the circumstances of*  
*his discharge [discharges],*  
 in that he, at , on , after having been discharged with  
 ignominy [for misconduct, &c.] from the Regiment,  
 enlisted in the Territorial Army for service in the Regiment of  
 , without declaring the circumstances of his discharge.

## No. 110.

## CHARGE-SHEET.

The accused, [name], a man belonging to the Army Reserve, is charged  
 with—  
 Sec. 6, *Using insulting language to a non-commissioned officer acting in the execution*  
 Reserve *of his office, and who would be his superior officer if the accused were subject to*  
 Forces Act, *military law,*  
 1882. in that he, at , on , when receiving his pay from  
 Company Quartermaster-Serjeant Regiment, said  
 to him, "You are a cheat," or words to that effect.

## No. 111.

## CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, a militiaman (supplementary reservist) called out for annual training, is charged with—  
*Absenting himself without leave,* Sec. 15, Reserve Forces Act, 1882.  
 in that he, at , on , without leave lawfully granted, or reasonable excuse, failed to appear for the annual training of his battalion, and remained absent until apprehended by the civil power at , on

## No. 112.

## CHARGE-SHEET.

The accused, [name], a man belonging to the Army Reserve called out for annual training, is charged with—  
*Absenting himself without leave,* Sec. 15, Reserve Forces Act, 1882.  
 in that he, at , on , the place and time appointed for him to attend, without leave lawfully granted or reasonable excuse, failed to appear.

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## App. II.

## SECOND APPENDIX.

- 
- (1)—FORMS AS TO COURTS-MARTIAL.  
 (2)—FORMS OF SUMMONS TO WITNESSES.  
 (3)—FORMS OF OATHS AND DECLARATIONS.
- 

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(1)—FORMS AS TO COURTS-MARTIAL.

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Army Form      **Form of Order for the Assembly of a General or District**  
 A. 47.            **Court-Martial.**

ORDERS BY                      commanding the  
    (Place, date.)

The detail of officers as mentioned below will assemble at  
 on the                      day of                      for the purpose of trying by a  
    court-martial the accused person [persons]  
 named in the margin [and such other person or persons as may  
 be brought before them].\*

PRESIDENT.

is appointed president.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

has been [or where the convening officer has the  
*appointment of a judge-advocate, is hereby*] appointed judge-  
 advocate.

The accused will be warned and all witnesses duly required to  
 attend.

The proceedings will be forwarded to

Signed this                      day of

A.B.

Note.—The  
 President  
 must be  
 named.  
 The mem-  
 bers and the  
 waiting  
 members  
 may be  
 mentioned  
 by name, or  
 the number  
 and ranks  
 and the unit†  
 to which  
 they belong  
 may alone  
 be named.

---

\* Any opinion of the convening officer with respect to the composition  
 of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20  
 and 21) should be added here, thus :

"In the opinion of the convening officer, officers of different  
 corps are not, having due regard to the public service, available"  
 (or as the case may be).

† The "unit," in the case of Royal Artillery, is a Brigade, where  
 such organisation exists.

‡ Add here, in the case of either a General or District Court-Martial  
 where a captain is appointed president and the officer convening the  
 court is not under the rank of field officer, "In the opinion of the



convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add, "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available."* (See *Army Act*, s. 48 (9).) App. II.

**Form for Assembly and Proceedings of Field General Court-Martial on Active Service.**

Army Form  
A. 3.

PROCEEDINGS.

On Active Service, this

19

day of A.  
Order  
convening  
the court.

Whereas it appears to me, the undersigned, an officer in command of \_\_\_\_\_, on active service that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned ;

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial ;  
\*[and that it is not practicable to delay the trial for reference to a superior qualified Officer] ;

\*Omit where  
Convening  
Officer is a  
Commanding  
Officer or is  
of Field  
Rank.

I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named.

\*[I am unable to appoint :—

- \*(1. Three Officers to form the Court)
- \*(2. A Field Officer as President)
- \*(3. Three Officers having more than one year's service)

\*Omit if not  
applicable.

for the following reasons, namely :—]

*President.*

Rank.	Name.	Regiment.

*Members.*

Rank.	Name.	Regiment.

\*Must be  
signed per-  
sonally by  
the Officer  
actually in  
command at  
the time and  
all altera-  
tions in the  
composition  
of the Court  
to be ini-  
tialled by  
him.

\*Signed \_\_\_\_\_

Commanding \_\_\_\_\_

Convening Officer.

## App. II.

## SCHEDULE.

Number, Rank, (a) Name and Unit of accused (b).	Offence charged.	Plea.*	Finding, and if Convicted, Sentence (c).	How dealt with by Confirming Officer (d).

\*Question to be asked of accused if he pleads not guilty (Rule of Procedure 39 (A)) :—

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer (to be recorded on separate sheet if necessary) :—

(Signed)\_\_\_\_\_ (Signed)\_\_\_\_\_

Commanding\_\_\_\_\_

Convening Officer (e)

President.

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

B.  
Certificate  
of President  
as to pro-  
ceedings.

I certify that the above Court assembled on the  
day of \_\_\_\_\_ and duly tried the persons named in the  
Schedule, and that the plea, finding, and sentence in the case of

each such person were as stated in the third and fourth columns App. II. of that Schedule.

I also certify that

1. The members of the Court
2. The witnesses
- \* (3. The interpreter)
- \* (4. The officers under instruction)

\*Omit if not applicable.

were duly sworn.

Signed this                      day of                      , 19 .

\_\_\_\_\_  
President of the Court-Martial.

I certify that the terms of A.C.I. 570 of 1918 have been complied with.†

Signed this                      day of                      19

C.  
Certificate in case of death sentences.

\_\_\_\_\_  
President of the Court-Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

D.  
Confirmation.

\*(I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this                      day of                      19

\*To be omitted unless, penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

\_\_\_\_\_  
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated)                      (Signed)

Promulgated and extracts taken in the case of

(Dated)                      (Signed)

Promulgated and extracts taken in the case of

(Dated)                      (Signed)

(a) When several cases are promulgated in one unit on the same day the officer need only sign once.

† See footnote (b), R.P. App. II, page 762.

App. II.  
 —  
 Army Form  
 A. 3.

**Form for Assembly and Proceedings of Field General Court-Martial when Troops are not on Active Service.**

## PROCEEDINGS.

A. At this day of 19 .  
 Order convening the Court. Whereas a complaint has been made to me, the undersigned, an Officer in Command of in the above-named country, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned, being offences against the property or person of inhabitants of, or residents in, the above-named country ;

And whereas I am of opinion that it is ~~not~~ practicable that such offences should be tried by an ordinary General Court-Martial; \* [and that it is not practicable to delay the trial for reference to a superior qualified Officer ;]

\*Omit where Convening Officer is a Commanding Officer or is of Field Rank. I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named.

\*Omit if not applicable. \* [I am unable to appoint :—

\*(1. Three Officers to form the Court)

\*(2. A Field Officer as President)

\*(3. Three Officers having more than one year's service)

for the following reasons, namely :—]

<i>President.</i>		
Rank.	Name.	Regiment.
_____	_____	_____
<i>Members.</i>		
Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

\*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

\*Signed \_\_\_\_\_

Commanding \_\_\_\_\_

Convening Officer.

[Note.—The remainder of this Form and the Schedule are the same as in the case of Proceedings of a Field General Court-Martial on Active Service.]

**Form of Declaration for Suspension of Rules under Rule of Procedure, 104.**

Army Form A. 49.

In my opinion [\*military exigencies, namely (*state them*)]  
render it [†impossible] to observe the provisions of rules‡  
on the trial of by court-martial  
assembled pursuant to the order of the of  
Signed at this day of

\*[or the necessities of discipline.]  
†[or inexpedient.]  
‡State the rule or rules which cannot be observed. (See Rule 104.)

A.B.

[Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.*]

**\*\*Form of Proceedings for General and District Courts-Martial.**

Army Form A. 9.

*Form of Proceedings of a General Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure), with Instructions for the guidance of the Court.*

\*\*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

N.B.—The proper Army Forms, to be obtained from Convening Officers, will be used in accordance with the instructions.

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general," and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

**A.**

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at  
on the day of 19 by order of

day of Commanding dated the  
19

*President.*

Rank.

Name.

Regiment.

\_\_\_\_\_

*Members.*

Rank.

Name.

Regiment.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, Judge-Advocate.

Trial of\*

The order convening the Court, the charge-sheet, and the summary (or abstract) of evidence are laid before the Court.

\*Have insert No., Rank, full Name, Regiment, and appointments (if any).

[Instruction.—*All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.*]

## App. II.

— The Court satisfy themselves that is not available  
 \*\*Here insert to serve owing to\*\*  
 season, § waiting member takes his place as a member of  
 †Here insert the Court.  
 Rank, Name and Regiment. The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

*Note.*—Before certifying that the Court have satisfied themselves as provided by Rules 22 and 23, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "Rules of Procedure 22 and 23," and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect:—

"I have compared the names of the officers who served upon the Court of Inquiry respecting the matter on which the ——— (first) charge against the "accused has been founded, with those of the officers detailed to serve on this "Court-Martial.

—————"(*Signature of President.*)"

The accused is brought before the Court.

†Here state Rank and Name, and Regiment (if any).

Prosecutor †

Counsel ‡ or defending officer ‡

‡Qualification to be stated.

At o'clock the trial commences.

The order convening the Court is read and is marked signed by the president and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused Answer by accused.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?

No. [Yes—see variation below.]

[Instruction.—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

## VARIATION.

## CHALLENGING OFFICERS.

(Rule of Procedure 25.)

*Answer.*—I object to

*Question to Accused.*—Do you object to any other person ?  
 (This question must be repeated until all the objections are ascertained.)

*Answer.*—

[If the president is objected to, that objection will be dealt with first, otherwise an objection to the junior officer will be disposed of first.]

*Objection to the President.*

*Question to accused.*—What is your objection to me as president ?

The accused, in support of his objection to the president, makes the following statement (*set out*) [and calls who states (*set out*)].

The Court is closed to consider the objection.

*Decision.*—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or,

**Decision.**—The Court allow the objection.  
The Court is re-opened, and the above decision is made known to the accused, and the Court adjourn. App II.

*Objection to Member.*

**Question to accused.**—What is your objection to (the junior officer objected to)?

The accused in support of his objection to the following statement (set out) [and calls (set out)], makes who states

The Court is closed to consider the objection

**Decision**—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or,

**Decision.**—The Court allow the objection

The Court is re-opened, and the above decision is made known to the accused.

retires.

**Fresh Member.**—\* takes his place as a member of the Court. \*Insert Rank. (This only applies where there are waiting members of the Court, otherwise the Court must adjourn.) Name and Regiment.

He appears to the Court to be eligible and not disqualified to serve on this Court-martial.

**Question to accused.**—Do you object to be tried by (the fresh member)?

**Accused.**—

(If he objects, the objection will be dealt with in the same manner as the former objection.)

**Question to accused.**—What is your objection to (the next junior of the officers objected to)?

(This objection will be dealt with in the same manner as the former objection.)

The Court adjourn for the purpose of fresh members being appointed.

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because (here state the reasons).

At o'clock on the Court resume their proceedings, and an Order appointing another president (or, fresh officers) is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such president (or officers) as provided by Rule of Procedure 22.

[Instruction.—The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.]

The president and members of the Court, as constituted after the above proceedings, are as follows:—

PRESIDENT.

Rank.

Name.

Regiment.

---

MEMBERS.

Rank.

Name.

Regiment.

---



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---

## App. II.

## B.

The President, Members, and Judge-Advocate are duly sworn.

The following officers under instruction are duly sworn.

[Instructions.—(1) *The witnesses if in Court, other than the prosecutor and the accused, should be ordered out of the Court at this stage of the proceedings.*

(2.) *Also any interpreter and shorthand writer should be now sworn.]*

Question to  
accused.  
A.

Do you object to as interpreter ?

Q.  
A.

Do you object to as shorthand writer ?

[Instruction.—*In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.*]

## CHARGE-SHEET.

The charge-sheet is signed by the president, marked B<sup>2</sup>, and annexed to the proceedings.

## VARIATION.

*If the accused has elected to be tried instead of being dealt with summarily by his commanding officer.*

The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to  
accused.  
A.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ?

[Instructions (1).—*Where there is more than one charge upon which the accused is arraigned the foregoing question will be asked after each charge (whether alternative or not) is read, the number of the charge being stated.*

(2.) *If the accused pleads guilty to any charge, the provisions of Rule 35 (B) must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge the Court, if they decide to proceed upon the more serious charge, will enter after the plea as recorded : " The Court proceed as though the accused had not pleaded guilty to any charge."*]

## VARIATIONS.

## OBJECTION TO CHARGE.

(Rule of Procedure 32.)

The accused objects to the charge, on the ground that (set out).

The Court is closed to consider their decision.

The Court disallow the objection [or, the Court allow the objection, and agree to report to the convening authority].

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed to the trial [or, adjourn].



AMENDMENT OF CHARGE.

App. II.

(Rule of Procedure 33 (A).)

The Court being satisfied that the name (or description) of the accused is and not as stated in the charge-sheet amend the charge-sheet accordingly.

or

(Rule of Procedure 33 (B).)

The Court, before any witnesses are examined, consider that, in the interests of justice, the following addition to (or omission from or alteration in) the charge is required (*set out*), and adjourn to report their opinion to the convening authority.

PLEA TO THE JURISDICTION.

(Rule of Procedure 34.)

The accused pleads to the general jurisdiction of the Court on the ground that (*set out*).

Do you wish to give evidence yourself or produce any evidence in support of your plea? Question to the accused.  
A.

Witness is examined on oath.

[Instruction.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.*]

The Court is closed to consider their decision.

The Court (a) overrule the plea and decide to proceed with the trial; or (b) allow the plea and decide to report to the convening authority, and adjourn;

or (c) are in doubt as to the validity of the plea and decide to refer the matter to the convening authority and adjourn (or make the following special decision (*set out*) and decide to proceed with the trial).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceed with the trial [or adjourn].

REFUSAL TO PLEAD.

(Rule of Procedure 35 (A).)

As the accused does not plead intelligibly [or refuses to plead] to the above charge, the Court enter a plea of not guilty.

INSANITY.

(Rule of Procedure 57.)

The Court find that the accused (No. rank name  
regiment) is by reason of insanity unfit to take his trial.  
Signed at this day of 19  
(Judge-Advocate). (President).

PLEA IN BAR OF TRIAL.

(Rule of Procedure 36.)

Accused, besides the plea of guilty [or, not guilty], offers a plea in bar of trial, on the following grounds (*set out*).

What are the grounds of your plea?

Question to the accused.  
A.

Do you wish to give evidence yourself or to call any witnesses in support of your plea?

Witness is examined on oath.

[Instruction.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case*

## App. II.

*of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.]*

The Court is closed to consider their decision.

The Court allow the plea and resolve to adjourn [or to proceed to the trial on another charge] [or the Court overrule the plea].

The Court is re-opened, and the above decision is made known to the accused.

The Court adjourn [or proceed with the trial on another charge] [or proceed with the trial].

---

The accused having pleaded guilty to the charge  
the provisions of Rule of Procedure 35 (B) are here complied with.

---

## CC.

## PROCEEDINGS ON PLEA OF GUILTY.

\*To be struck out in case no plea of "Not Guilty" has been proceeded with.

\*[The Court having been re-opened, the accused is again brought before it, and the charge [charges] to which he has pleaded guilty is [are] read to him again.]

The accused [number, name, rank, regiment] is found guilty of the charge [all the charges]  
or The accused [number, &c.] is found guilty of the charge, and is found not guilty of the charge.

[Instruction.—If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of a plea of guilty until after the finding on that other charge; and in that case the Court will be re-opened and the charge on which the record is guilty must be read to the accused again.]

The accused may, in accordance with Rule 37 (B), make any statement he wishes in reference to the charge.]

The summary [or abstract] of evidence is read, marked, signed by the president, and attached to the proceedings.

[Instruction.—If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet as on a plea of not guilty.]

Question to accused.

Do you wish to make any statement in mitigation of punishment?

A.

The accused in mitigation of punishment says [or if the statement is in writing, hands in a written statement, which is read, marked, signed by the president, and attached to the proceedings].

[Instruction.—If the statement of the accused is not in writing, the material portions should be taken down in the first person, and as nearly as possible in his own words.]

If counsel or defending officer addresses the court on behalf of the accused the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

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VARIATIONS.

App. II.

ALTERATION OF PLEA.

(Rule of Procedure 37 (D).)

The Court being satisfied from the statement of the accused [or the summary of evidence, or otherwise], that the accused did not understand the effect of the plea of "guilty," enters at the foot of page "CC" of the proceedings: "The Court consider that the accused does not understand the effect of his plea of 'guilty,' alters the record, and enters a plea of 'not guilty'".  
[Instruction.—The Court will then proceed in respect of this charge as on a plea of not guilty.]

WITNESSES FOR DEFENCE ON PLEA OF GUILTY.

(Rule of Procedure 37 (F).)

The Court give permission to the accused to give evidence himself and [or] to call witnesses to prove his above statement that [here specify the statement which is to be proved].  
[Instruction.—The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of not guilty.]

DD.

Do you wish to give evidence yourself or to call any witnesses as to character? Question to accused.

[Instruction.—The examination, &c., of witnesses as to character <sup>A.</sup> will proceed as in the case of a witness giving evidence as to the facts of the case.]

C.

PROCEEDINGS ON PLEA OF NOT GUILTY.

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? Question to accused.

[Instruction.—This question will only be asked if the accused pleads "not guilty" to one or more of the charges. If accused desires to make an application for an adjournment, the court will hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto. Such statement or evidence will be recorded, together with the decision of the court on a separate sheet of paper attached to the proceedings and signed by the president of the court.]

The prosecutor makes an opening address, [or hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.—Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and the record should be attached to the proceedings.]

## App. II.

First witness  
for prosecution.

\* Here insert  
his number,  
rank, name,  
regiment, and  
appointment  
(if any), or  
other description.

The prosecutor proceeds to call witnesses.

\* being duly sworn is examined by the prosecutor.

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Cross-examined by the Accused [or by Counsel, or Defending Officer.]

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---

Re-examined by the Prosecutor.

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Questioned by the Court.

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[Instructions.—(1.) *The fact that Rule 83 (B) has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2.) *If the accused, or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded.]*

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## VARIATIONS.

## POSTPONEMENT OF CROSS-EXAMINATION.

(Rule of Procedure 76.)

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

## OBJECTION TO EVIDENCE OR PROCEDURE.

(Rule of Procedure 70.)

The accused, [or counsel, or defending officer or the prosecutor] objects to the following question on the ground that (*set out*).

The Court is closed to consider their decision.

The Court overrule [or allow] the objection, and the Court is re-opened and the decision announced and the Court proceed with the trial.

## EXPLANATION OR CORRECTION OF EVIDENCE.

(Rule of Procedure 83 (B).)

The witness, on his evidence being read to him, makes the following explanation or correction (*set out*).

Examined by the prosecutor as to the above explanation or alteration.

---



---

Examined by (or on behalf of) the accused as to the above explanation or alteration.

---



---

The prosecutor and the accused (or counsel or defending officer) decline to examine him respecting the above explanation or correction.

---



---

being duly sworn is examined by the prosecutor.  
*(The examination, &c., of this and every other witness proceeds as in the case of the first witness.)*

—  
 Second witness for prosecution.

VARIATIONS.

EXTENDED SITTING OF COURT.

*(Rule of Procedure 64 (B).)*

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that *(set out)*.

ADJOURNMENT.

At        o'clock the Court adjourn until        o'clock on the  
 On the        of        19        , at        o'clock, the Court  
 reassemble, pursuant to adjournment; present the same members as  
 on the        of        .

[Instructions.—(1) *If upon reassembly a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If either the president or the Judge-Advocate is absent, and cannot attend within a reasonable time, the Court will adjourn, and the president or senior member present, will thereupon report the case to the convening authority. (See Rules of Procedure 66 and 102.)]*

ABSENCE OF PRESIDENT OR MEMBER.

*(Rank—Name—Regiment)* being absent.

A medical certificate [or letter, or as the case may be] is produced, read, marked        , and attached to the proceedings.

The Court adjourn until        or,

There being present        (not less than the legal minimum) members, the trial is proceeded with.

An order bearing date        , appointing        (the senior member) president of the Court-martial in the place of        is read, marked        , signed by the president, and attached to the proceedings.

The trial is proceeded with.

---

Examination [cross-examination] of        continued.

---

D.

The prosecution is closed.

DEFENCE.

Do you apply to give evidence yourself as a witness ?

Do you intend to call any other witness in your defence ?

Is he a witness as to character only ?

Question to accused.  
 A.  
 Q.  
 A.  
 Q.

## App II.

## INSTRUCTIONS TO THE COURT.

(i) *When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.*

(ii) *All addresses by prosecutor, counsel, or defending officer, whether recorded by the Court or handed in in writing, will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (c) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President.*

*[Where any evidence is given for the defence.]*

The evidence of the accused (and of the witnesses for the defence, including witnesses as to character) is recorded on a separate page. (See overleaf.)

*First witness  
for the  
defence*

*[Instruction.—All evidence given upon oath will be recorded in the following form:—]*

*\*Here insert  
his number,  
rank, name,  
regiment,  
and appoint-  
ment (if any),  
or other  
description.*

The accused\* being duly sworn states  
(or being examined by counsel or defending officer states.)

---

Cross-examined by the Prosecutor.

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---

Re-examined.

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---

Questioned by the Court.

---

*[Instructions.—(1) The fact that Rule 83 (B) has been complied with should be recorded.*

*(2) If the prosecutor declines to cross-examine, that fact must be recorded.]*

---

#### VARIATION.

##### ADJOURNMENT TO PREPARE DEFENCE.

The Court at the request of the accused (or Counsel or defending officer) adjourn until in order to enable him to prepare his defence.

---

*Second wit-  
ness for the  
defence.*

being duly sworn is examined by the  
accused (or counsel or defending officer).

---

Cross-examined by the Prosecutor.

App. II.

Re-examined.

Questioned by the Court.

[Instructions.—(1) *The fact that Rule 83 (B) has been complied with should be recorded.*

(2) *If the prosecutor declines to cross-examine, that fact must be recorded.*

(3) *The evidence of witnesses to character will be taken in the same manner as that of witnesses to the facts.]*

(Where the accused does not give evidence upon oath.)

Have you anything to say in your defence ?

The accused in his defence says (see Instruction (1) below) [or hands in a written address, which is read, marked , signed by the president, and attached to the proceedings].

Question to the accused.  
A.

[Instructions.—(1). *In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see INSTRUCTIONS TO THE COURT above.)*

(2) *If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.*

*Any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]*

#### VARIATIONS.

##### RECALLING WITNESSES.

(Rule of Procedure 86.)

- (1) At the request of the prosecutor (or of the accused) is recalled and examined on his former oath through the President (or Judge-Advocate) and states as follows (set out) ;

or,

- (2) The prosecutor with leave of the Court calls (or recalls) for the purpose of rebutting a material statement made by a witness for the defence. The witness being duly sworn (or on his former oath) being examined by the prosecutor states as follows (set out with any cross-examination, re-examination, &c.);

or,

## App. II.

- (3) The prosecutor calls (or recalls) *in reply to the* witness(es) as to character called by the accused. The witness being duly sworn (or on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, &c.*);

or,

- (4) The Court in accordance with Rule of Procedure 86 (p) calls (or recalls) , who being duly sworn (or on his former oath) states in reply to the President (or Judge-Advocate) as follows (*set out*).

[Instruction.—In (1), (2) and (3) witnesses must be called or recalled before the closing address of or on behalf of the accused. In (4) witnesses may be called by the Court at any time before the finding; in this case the accused or counsel or defending officer should be given the opportunity of asking further questions through the Court.]

## ADJOURNMENT TO PREPARE ADDRESSES, &amp;c.

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

The Court, at the request of the Judge-Advocate, adjourn until to enable him to prepare his summing up.

## SUMMING UP.

The Judge-Advocate makes the following summing up [*or, if the summing up is in writing, hands in a written summing up, which is read, marked , signed by the President, and attached to the proceedings*];

or,

The Judge-Advocate and the Court think a summing up unnecessary.

## E.

## \* FINDING.

The Court is closed for the consideration of the finding.

The Court find that the accused (*number, rank, name, regiment*),

(1) *Acquittal on all Charges.*

is not guilty of the charge [*or, all the charges*] [*and honourably acquit him of the same.*]

The finding[s] is [are] read in open Court and the accused is released.

Signed at , this day of 19 .

(Judge-Advocate). (President).

(2) *Acquittal on some but not all Charges.*

is not guilty of the charge[s] [*and honourably acquit him of the same*], but is guilty of the charge[s].

The finding[s] of "not guilty" is [are] read in open Court.

(3) *Conviction on all Charges.*

is guilty of the charge [*or, all the charges*].

\* To be struck out except in cases where trial has taken place on a plea of "not guilty."



(4) *Special Findings.*

(a) is guilty of the charge[s] and guilty of the charge with the exception of the words (*set out*) [or, with the exception that (*set out*)]

or,

(b) is not guilty of desertion but is guilty of absence without leave.

[Instruction.—*Any special finding permitted by Rule of Procedure 44 (D) will be framed as far as possible in accordance with (a). Any special finding allowed by Section 56 of the Army Act, may be expressed in accordance with (b) ].*

(5) *Reference to confirming authority.*

(*Rule of Procedure, 44 (c).*)

The Court find as regards the charge that the accused did (*set out the facts which the Court find to be proved*), but doubt whether the facts proved show the accused to be guilty or not of the offence charged [or of the offence of (*any offence of which the accused might under the Army Act legally be found guilty on the charge as laid*)]. They therefore refer to the confirming authority for an opinion and adjourn.

or,

(*Rule of Procedure 44 (G).*)

[*Note.—This applies only to alternative charges.*]

The Court find that the accused did (*set out such particulars of the charge as the Court find to be proved*), but doubt whether such facts constitute in law the offence stated in the charge or in the charge. They therefore refer to the confirming authority for an opinion and adjourn.

(*In either case.*)

The Court re-assembles on the day of 19 . The opinion of the confirming authority is read, marked , signed by the president and attached to the proceedings.

The Court now find that the accused (*number—rank—name—regiment*) is (*the findings to be recorded in the usual manner*).

(6) *Insanity.*

(*Rule of Procedure 57.*)

The Court find that the accused (*number—rank—name—regiment*) did the act (*or made the omission*) which forms the subject of the charge[s] but was insane at the time when he did (*or made*) the same.

PROCEEDINGS ON CONVICTION.

*Before Sentence.*

\* The Court being re-opened the accused is again brought before it.

(*Rank—Name—Regiment*) is duly sworn.

\* When the Court is already open this sentence will be struck out.

## App. II.

— Have you any evidence to produce as to the character and particulars of service of the accused ?

Question by  
the President.

A. I produce this statement.

The witness hands in the statement, which should be in the following form :

Army Form B. 296. **STATEMENT as to CHARACTER and PARTICULARS of SERVICE of ACCUSED.**

*Number—Rank—Name—Regiment* , [or  
*as the case may be*].

(1) The following is a fair and true summary of the entries in the regimental and squadron, troop, battery, or company conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with :—

	Within last		Since	
	12 months.		Enlistment.	
For	,	times		times.
For	,	times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the conduct sheets of the accused.

[Instruction.—If the charge is for drunkenness, the entries for drunkenness must be stated separately and dated.]

(2) The accused has not been previously convicted,

or,

The previous convictions of the accused by a court-martial or a civil court, and dispensations with trial under A.A. 73, are set out in the schedule annexed to this statement.

(3) The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for  
beginning on the day of

(4) The accused has been in confinement, awaiting trial on the present charges, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.

(5) The present age of the accused according to his attestation paper is

(6) The date of his attestation specified in his attestation paper is

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

(8) The accused is entitled to deferred pay or gratuity in respect of service.

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

(10) The accused is in possession of or entitled to no military App. II. decoration or military reward [or is in possession of or entitled to (state any military decoration or reward)].

(11) (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of

(12) (In the case of an officer.) The accused holds in the army the rank of dated , and in his regiment [or corps or department] the rank of dated

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date :—

Date of promotion.

In the rank of , years.

In the rank of , years.

In the rank of , years.

[Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.]

#### SCHEDULE.

Of convictions by a court-martial or civil court and of cases in which trial has been dispensed with of accused, No. ,

Rank , Name , of regiment [or as the case may be.]

[Instruction.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.]

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

A.B.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President and annexed to the proceedings.

Is the accused the person named in the statement which you have heard read ?

Question by the President.

Answer by the witness.

Have you compared the contents of the above statement with Q. the regimental books ?

A.

Are they true extracts from the regimental books, and is the Q. statement of entries in the conduct sheets a fair and true summary of those entries ?

A.

Cross-examined by the Accused [or by Counsel, or Defending Officer].

App. II.

Re-examined.

or,

The accused declines to cross-examine this witness.

[Instructions.—(1) *If any evidence, other than documentary, is given the fact that Rule 83 (B) has been complied with will be recorded.*

(2) *Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentence.*

(3) *At the request of the accused, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.*

*The accused is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.*

*When all the evidence on the above matters has been given, the accused may address the court thereon.*

(4) *If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.]*

Do you wish to address the Court ?

Question to  
the accused.  
Answer.

The court is closed for the consideration of the sentence.

F.

## SENTENCE.

[Instruction.—*The provisions of Sections 44, 182 and 183 of the Army Act must be carefully attended to by the Court in passing sentence.*]

Sentence.

The Court sentence the accused (No.—Rank—Name—Regiment.)

[Instruction.—*The sentence is to be marginally noted in every case.*]

In the case of an officer :—

(a) †to suffer death by being shot [hanged].

(b) to suffer penal servitude for the term of \_\_\_\_\_ years [or for life].

(c) to be imprisoned with hard labour [without hard labour] for

[Instructions.—(1) *As to the term of imprisonment see below in the case of a soldier.*

(2) *A sentence of cashiering should precede a sentence of imprisonment or penal servitude.]*

(d) to be cashiered.

(e) to be dismissed from His Majesty's service.

Death.  
Penal  
servitude  
for  
Imprison-  
ment H.L.  
(or without  
H.L.) for

Cashiered.  
Dismissed.

† As to communication to accused persons upon whom sentence of death has been passed, see footnotes (b) on p. 762.

(f) [Where the officer's army rank is superior to his regimental rank.]

Forfeiture of seniority of rank.

to take rank and precedence as in his corps as if his appointment to that corps bore date the day of , and to take rank and precedence in the Army as if his appointment as bore date the day of

or,

to take precedence in the rank held by him in his corps as if his name had appeared [a specified number of] places lower in the list of his corps, and in the rank held by him in the Army as if his name had appeared [a specified number of] places lower in the list of the Army.

[Or, where the officer's army and regimental rank are the same.]

to take rank and precedence in his corps and in the Army as if his appointment as bore date the day of

or,

to take precedence in the rank held by him in his corps as if his name had appeared [a specified number of] places lower in the list of his corps and in the rank held by him in the Army as if his name had appeared [a specified number of] places lower in the list of the Army.

[Or, where the officer has no regimental rank.]

to take rank and precedence in the Army as if his appointment as in the Army bore date the day of

or,

to take precedence in the rank held by him, as if his name had appeared [a specified number of] places lower in the list of the Army.

[Instruction.—In each case the form may be varied so that the Court may exercise the power under the Army Act, s. 44 (f), and Rule of Procedure 47 of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both.]

(g) to forfeit service for the purpose of promotion.

Forfeit service for promotion.

[Instruction.—This applies only in the case of an officer whose promotion depends upon length of service, and a sentence can be inflicted in respect of all or any part of his service.]

(h) to be reprimanded [or severely reprimanded].

Reprimand or severe reprimand.

(j) to be put under stoppages of pay until he has made good the sum of in respect of or [and] until he has made good the value of the following articles, viz., 1 value 1 value , &c.

Stoppages.

In the case of a soldier :—

(k)† to suffer death by being shot [hanged].

Death.

† As to communication to accused persons upon whom sentence of death has been passed, see footnote (b) on p. 762.

## App. II.

Penal servitude for

Impt. H.L.  
(or without  
H.L.) for

Detention for

Field punishment  
for

(l) to suffer penal servitude for the term of \_\_\_\_\_ years  
[or for life].

(m) to be imprisoned with hard labour [without hard labour] for

(n) to undergo detention for

(o) to suffer field punishment for

[Instructions.—(1) *If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence.*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks.*

*Where, for any reason, a court consider that a sentence of reduction to a lower rank in the case of a N.C.O. would be too severe a sentence, they can sentence the offender to forfeiture of seniority of rank.]*

Discharged  
with  
ignominy.  
Dismissed.

(p) to be discharged with ignominy from His Majesty's service.

(q) [if belonging to the territorial army] to be dismissed from His Majesty's service.

Forfeiture of  
seniority, and  
reduction.

(r) [if a non-commissioned officer].\*

(1) to take rank and precedence as if his appointment to the rank of \_\_\_\_\_ bore date \_\_\_\_\_ ; or

(2) to be reduced to the rank of serjeant ; or

(3) to be reduced to the rank of corporal ; or

(4) to be reduced to the rank of bombardier ; or

(5) to be reduced to [a lower grade] or to be reduced to the ranks ; or,

(6) to be reprimanded or severely reprimanded.

Fined i. s. d.  
Stoppages.

(s) to be fined

(t) to be put under stoppages of pay until he has made good the sum of \_\_\_\_\_ in respect of \_\_\_\_\_ or [and] until he has made good the value of the following articles, viz., \_\_\_\_\_ value \_\_\_\_\_ value &c.

Forfeiture  
of pay.

(u) to forfeit all ordinary pay for a period of \_\_\_\_\_

(w) to forfeit [state number or all] good conduct-badges [or badges] with the pay attached thereto.

to forfeit deferred pay in respect of [all or \_\_\_\_\_ calendar months or \_\_\_\_\_ years] previous service.

to forfeit [all or \_\_\_\_\_ years, or \_\_\_\_\_ calendar months] past service for the purpose of determining pension.

[Instructions.—(1) *An offender may be sentenced to all or any of the above forfeitures.*

\* A sentence of reduction from or to an acting or lance rank is void ; e.g., a sentence on a corporal to be reduced to lance corporal, or on a lance-corporal to be reduced to the ranks, is void. See A.A. 183 J and note 6.

(2) *In the case of a warrant officer, a district court-martial must use one of the following forms either in lieu of, or in addition to, such of the foregoing forms as relate to forfeitures, fines and stoppages; a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see A.A., s. 182 (2).]* App. II.

(x) to be dismissed from the service,

or,

(y) To be reduced in the list of his rank as if his appointment thereto bore date the day of

or,

To be reduced to an inferior class of warrant officer; that is to say, to

or,

(z) To be reduced to [a lower grade] ;

or,

(zz) [If he was originally enlisted as a soldier, but not otherwise] To be reduced to the ranks,

or,

(zzz) To be reprimanded or severely reprimanded.

#### RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that (set out)

The Court recommend that of the service forfeited under section 79 of the Army Act shall be restored on the ground that (set out)

#### SIGNATURE.

Signed at , this day of 19

(Signature)

Judge-Advocate.

(Signature)

President.

#### REVISION.

Revision.

At , on the day of at for  
o'clock, the Court re-assemble by order of  
the purpose of re-considering their

Present, the same members as on the

[Instruction.—If a member is absent and the absence will reduce the Court below the required minimum, or if he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present, shall thereupon report the case to the convening officer.]

The letter [order or memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [or sentence] is read, marked , signed by the president, and attached to the proceedings.





Confirmed [or not confirmed].

App. II.

Signed at , this day of 19

(Signature of Confirming Authority).

[Instruction.—Any remarks of the confirming authority should be separate from and form no part of the proceedings. The confirming authority will in no case comment upon a finding of "not guilty," or upon the inadequacy of the sentence.]

PROMULGATION.

Promulgated and extracts taken at , this day of 19 .

(Signature of officer in charge of documents).

[Instruction.—Proceedings which are not confirmed must be promulgated.]

(2)—FORMS OF SUMMONS TO WITNESSES.

(a) IN THE CASE OF A SUMMARY OF EVIDENCE.

Army Form  
A. 12.

To

Whereas a charge of having committed an offence triable by court-martial has been preferred before me against (number, rank, name, unit), and whereas I have directed a summary of the evidence to be taken in writing at (place) on the day of at o'clock in the noon :

I do hereby summon and require you (name) to attend as a witness at the said place and hour (and to bring with you the documents hereinafter mentioned, viz. ).

Whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)

Commanding Officer of the Accused.

(b) IN THE CASE OF A COURT-MARTIAL.

Army Form  
A. 13.

To

Whereas a court-martial has been ordered to assemble at on the day of 19 , for the trial of , of the

regiment, I do hereby summon and require you A.

B. to attend, as a witness, the sitting of the said Court at on the day of

at o'clock in the forenoon [and to bring with you the documents hereinafter mentioned, namely, ], and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of 19 .

(Signature)

Convening Officer [or Judge-Advocate or President of the Court].

## App. II.

## (3)—FORMS OF OATHS AND DECLARATIONS.

## OATHS.

## PRESIDENT AND MEMBERS (a).

I swear by Almighty God that I will well and truly try the accused [or accused persons] before the Court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused, (b) I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose, or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law (c).

## JUDGE-ADVOCATE (d).

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

## OFFICER UNDER INSTRUCTION (d).

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

## SHORTHAND WRITER (d).

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the Court a true transcript of the same.

## INTERPRETER (d).

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

(a) See A.A. 52 (1) and note, and R.P. 26.

(b) The words "except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused" have regard only to communication to accused persons upon whom sentence of death has been passed, and the instructions of the Army Council in the behalf stated are contained in Army Council Instruction 570 of 1918, and are as follows:—

"When a court-martial upon conviction passes a sentence of death upon any officer or soldier, at the conclusion of the trial the president will cause to be forthwith transmitted to the accused under sealed cover Army Form A. 3006, duly completed and signed by himself. The president will attach to the proceedings a certificate, signed by himself and dated, stating that these instructions have been complied with."

For specimen form see p. 768.

(c) The qualification "unless thereunto required in due course of law" only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

(d) See A.A. 52 (2) and R.P. 27.

**WITNESS (a).**

**App. II.**

I swear by Almighty God that the evidence which I shall give before this Court shall be the truth, the whole truth, and nothing but the truth.

**MANNER OF TAKING THE OATH (b).**

A person taking the oath will hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand and will say or repeat the oath after the person administering it.

**SOLEMN DECLARATIONS (c).**

The form of declaration will be the same as the form of oaths except that for the words "I swear by Almighty God" will be substituted the words "I (*name in full*) do solemnly promise and declare"; and that the words "solemnly promise and declare" will be substituted for the word "swear" wherever it occurs.

**MEMORANDA FOR THE GUIDANCE OF OFFICERS CONCERNED WITH COURTS-MARTIAL.**

The following memoranda as to courts-martial are intended for **Memoranda,** the guidance of commanding and convening officers and others with a view to securing uniformity of practice and to avoiding some common mistakes.

*These memoranda do not form part of the Appendix to the Rules of Procedure.*

*Commanding Officers.*

1. A commanding officer will take care that an accused person is not detained in custody beyond 48 hours without the charge being investigated, unless investigation is impracticable, in which case a report will be made to the officer to whom application to convene a court-martial would be made (R.P. 2). Should the accused remain in custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, the commanding officer will send a special report to the convening officer as above, stating the necessity for further delay. A similar report will be sent every eight days until trial is ordered (A.A. 45; R.P. 1). These reports must be submitted irrespective of whether or not the delay in convening the court-martial rests with the convening officer.

2. Before applying for the trial of an offender a commanding officer should satisfy himself—

- (a) That the accused is subject to military law and is charged with an offence which is an offence against the Army Act;

(a) See A.A. 52 (3) and R.P. 82.

(b) See also R.P. 30 as to swearing a person in the form and manner in which an oath is usually administered in Scotland, or according to the form of his religion.

(c) See A.A. 52 (4) and R.P. 28.

- (b) That the offender is not exempt from trial under the provisions of A.A. 161 ;
- (c) That the offence is not one of those referred to in K.R. 547, which he can himself dispose of without reference to superior authority, or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment ;
- (d) In cases of drunkenness, that A.A. 46 (3) and K.R. 575 do not require him to deal with the case himself ;
- (e) That the evidence justifies the trial of the offender on the charge ;
- (f) That the charge is properly framed under the appropriate section of the Army, or other, Act ;
- (g) That when once an accused has elected to be tried upon the charge as read out to him from the guard report, it is in no circumstances added to or increased in gravity (see K.R. 549 (b)) ;
- (h) That an officer had given the accused a copy of the summary (or abstract) of evidence as soon as practicable after he had been remanded for trial, and that his rights as to preparing his defence and of being assisted or represented at the trial had been explained to him by that officer (see R.P. 14 (B)).

**3. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with :—**

- (a) The application for trial (A.F. B 116) must be accompanied by all necessary documents as therein specified, and the medical officer's certificate at the foot completed ; the application should ordinarily be submitted within 36 hours after the accused has been remanded for trial (R.P. 5) ;
- (b) The name of the officer to act as prosecutor must be stated on the application ;
- (c) If the accused has elected to be tried under A.A. 46 (8), the fact must be clearly stated on the form of application for trial ;
- (d) The information required as to officers who have investigated the case, or sat on a court of inquiry, must be given with great care ;
- (e) The application must be signed by the officer in actual command of the offender's unit ;
- (f) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs, and should state the place and date of signature ;
- (g) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered. The place and date should be entered by the officer signing the orders (see p. 714) ;
- (h) The section of the Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers ;

- (i) If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet ;
- (j) When it is intended to prove any facts in respect of which any deduction from the ordinary pay of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge ;
- (k) When part of the evidence is documentary, the statement of the witness made on producing the documents should be included in the summary ; such statement must identify the accused as the person to whom the document refers or relates ;
- (l) A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers ;
- (m) All irrelevant, hearsay or otherwise inadmissible statements should be eliminated from the summary ;
- (n) Written statements from witnesses not actually called must be signed and certified as required by R.P. 4 (G) ;
- (o) At the close of the evidence of each witness who is not cross-examined by the accused, it should be noted that "accused declines to cross-examine" ;
- (p) The evidence of each witness must be signed by him ;
- (q) The record of any statement made by the accused should be prefaced by a note that he was formally "cautioned" ;
- (r) A statement that the requirements of R.P. 4 (C), (D), (E) have been complied with should be entered at the end of the summary of evidence and signed by the officer taking the evidence. The place and date should be stated ;
- (s) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial ;
- (t) Where the charge is for deficiency of kit, unless A.F. B 115 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies, and the fact that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will, of course, be omitted from the charge ;
- (u) A.F. B 296, by whomsoever produced, is to be signed by the officer having the custody of the books from which it is compiled. In preparing this form, minor offences may be grouped as "miscellaneous" ; offences of the same class as that being charged should always be shown in a separate group ;
- (v) Where A.F. B 115 is to be produced, it must be similarly signed. The original declaration of the court of inquiry (on A.F. A 2), even if in existence, is not admissible in evidence : nor is A.F. B 115, unless the entry in A.B. 161 (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's unit ;

- (\*) It should be noted that a "descriptive return" (A.F. O 1618) is only admissible as evidence of matters therein stated as facts, *e.g.*, that the accused was arrested on a particular day. It is not evidence of the date when his absence began, which must be proved by a witness.

4. After trial has been ordered the commanding officer must satisfy himself that the following provisions have been complied with :—

- (a) The accused must be warned for trial not less than 24 hours before the court assembles ;
- (b) The accused must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and of the summary of evidence, and (if he desires it) informed of the ranks, names and corps of the officers who are to form the court as well as of any waiting members ;
- (c) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance ;
- (d) The accused must be afforded proper opportunity for preparing his defence ;
- (e) No officer of the unit to which the accused belongs may be detailed as a member of the court who is ineligible or disqualified to serve under the provisions of R.P. 19 ;
- (f) In the case of a joint trial, the accused persons should be informed of the intention to try them together, and of their right to claim separate trials if the nature of the charge admits of it ;
- (g) The accused must be seen by a medical officer on the morning of each day the court is ordered to sit for his trial.

5. After confirmation the commanding officer must see that the following provisions are complied with :—

- (a) The proceedings, whether confirmed or not, must be promulgated as laid down in K.R. 668 ;
- (b) The record of the promulgation must be entered on the proceedings in the form shown on p. 761, and extracts recorded in the regimental books ;
- (c) The proceedings must be returned without delay to the proper authority after promulgation.

*Convening Officer.*

6. The convening officer, in addition to satisfying himself as regards paras. 2 and 3 (above), will ensure :—

- (a) That in the case of all trials by general court-martial at home stations, and in all cases of fraud (except simple theft) and indecency committed at home stations, the charge-sheet and summary (or abstract) of evidence are submitted to the J.A.G. before trial is ordered ;
- (b) That he holds the necessary warrant empowering him to convene the description of court which he desires to convene ;

- (c) That the court which he has decided to convene is properly composed in accordance with the Army Act (and see R.P. 20-21) ;
- (d) That no officer is detailed to serve on the court who is ineligible or disqualified under the Army Act (and see R.P. 19\*) ;
- (e) That at home stations application is made to the J.A.G. for the appointment of a judge advocate in all cases where such an appointment is legally required or is desirable. It is open to him to submit with his application the name of a person whom he recommends for appointment ;
- (f) That the president is named in the convening order and that the other officers detailed to serve are stated therein either by name or by the units from which they are to be drawn ;
- (g) That the convening order is signed by him, or by an officer of his staff authorised by usage of the service to sign his orders ;  
[N.B.—In the case of a field general court-martial, the convening officer must himself sign the convening order.]
- (h) That the order for trial at the foot of the charge-sheet is signed by him, or by an officer of his staff signing " for " him.

7. A special certificate must be inserted in the convening order in the following cases :—

- (a) Where an officer of the prescribed rank is not available as president (see A.A., 48 (9)) ; or
- (b) Where, for the trial of an officer, officers of equal or superior rank to the accused are not available (see R.P. 21 (B)) ; or
- (c) Where it is not practicable for a court-martial to be composed of officers belonging to different corps (see R.P. 20 (A)) ; or
- (d) Where the necessary number of military officers is not, or could not be made, available (see A.A. 48 (10)) ; or
- (e) Where it is not practicable to appoint an officer of the Supplementary Reserve or of the Territorial Army to serve on a court-martial for the trial of an offender belonging to those branches of the service respectively (see R.P. 20 (B)).

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, he will apply to the command concerned asking for the names of officers to compose the court, and these names will be inserted in the convening order. The command which furnishes the officers should then insert in the command orders an order to the effect that " the undermentioned officers have been placed at

\* For instance, if the accused is charged with embezzling money belonging to the officers' mess of a particular unit, he will be careful to see that no officer of that unit is detailed to sit on the court-martial.

the disposal of the Commander,       th Brigade (or as the case may be) for duty at a court-martial to assemble at [place] on [date]."

8. Where the convening officer or the senior officer on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules of Procedure referred to in R.P. 104, he must make on A.F. A 49 a declaration to that effect, specifying the nature of those exigencies or necessities.

9. The convening officer must ascertain whether the accused desires to have a defending officer assigned to represent him at his trial; if so, he must endeavour to meet his wishes. Should no suitable officer be available, the convening officer should notify the president in writing.

10. The convening officer must send to the president the convening order, charge-sheet and summary (or abstract) of evidence. Except in the case of the joint trial of two or more persons, a separate copy of the convening order should be supplied in respect of every person to be tried.

#### *General.*

11. The original convening order must be before the court, and the president must satisfy himself that the court is duly constituted according to its terms.

The court must not make any alteration or correction in the convening order, nor, save as allowed by R.P. 33 (A), in the charge-sheet.

12. Where, in accordance with R.P. 71, the court is sworn at one time in presence of several accused persons who are to be tried separately in succession, the time at which the convening order is read should be recorded on page A of each A.F. A 9 as the time at which the trial of each of the accused commences; in such cases it is desirable that the time of the arraignment of each such accused should be inserted on page B of each A.F. A 9 before the words: "The accused is arraigned, &c."

13. The full name and description of the accused must be entered on the first page of the proceedings and in every finding and sentence.

14. Care must be taken that, whenever a court of inquiry has been held, the relevant certificate (on the first page of the proceedings) is properly completed (see p. 742 for form).

15. Every witness, including the officer producing A.F. B 296, must be sworn in the presence of the accused to whom his evidence refers; he must not be examined on a former oath taken in the presence of another accused person.

The prosecutor or other person producing documents must be sworn.

16. The evidence will usually be taken down in narrative form. Questions and answers recorded *verbatim* will be numbered consecutively ("Q.1," "A.1," &c.) throughout.



17. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the originals and found to be correct. As a rule, it is preferable to attach copies and not original documents to the proceedings. See K.R. 650.

18. In accepting A.Fs B 296, B 115 and O 1618, attention should be given to para. 3 (u), (v), (w), *supra*. Where A.Fs. B 115, O 1617 and O 1618 are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts which they purport to prove; but the record of the evidence should always show that a witness identified the accused as the person to whom the particular document relates.

19. A certified true copy on A.F. B 115 of an entry in A.B. 161 is sufficient evidence thereof; it is not necessary for the court to compare the copy with the book.

20. Where the value of arms, ammunition, equipment, or public clothing lost or damaged is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be discharged with ignominy, in case the latter part of the sentence should be remitted.

21. Included in A.F. A 9 are two sets of pages "C" and "CC"—one for proceedings on the plea of "Not guilty" and one for proceedings on the plea of "Guilty." Where the pleas recorded are all "Not guilty," or all "Guilty," the set pertaining to the plea or pleas recorded is alone to be used.

When some of the pleas are "Not guilty" and some "Guilty," both sets will be used, the court proceeding first on the plea or pleas of "Not guilty" up to and including the finding, and then on the plea or pleas of "Guilty"; it is not necessary to insert before page "CC" a separate sheet containing the findings of the court upon the pleas of "Not guilty."

22. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of A.F. A 9 being adapted accordingly, and the replies of each of the accused to the questions therein set out being separately recorded. Page E should be used for the finding and proceedings on conviction and page F for the sentence in each case.

23. Where trial proceeds on more than one charge-sheet, all printed matter on page A and the two printed lines at the top of page B should be struck out in the case of the second or any subsequent charge-sheet, the word "second", "third" (or as the case may be) being inserted before the word "charge-sheet" on page B.

24. The charge-sheet is to be inserted in the proceedings after page B; all other documents are to be attached at the end of the proceedings in the order of their production to the court.

25. Every document attached to the proceedings should be signed by the president and marked with a reference letter, preferably not one used in A.F. A 9.

26. In the case of a plea of "Guilty," the summary of evidence is to be annexed to the proceedings. In the case of a plea of "Not guilty," it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

27. All erasures of written or printed matter, and all interlineations and corrections should be initialled by the president or judge-advocate (if any).

28. After the pages have been put together in the order prescribed, they should be numbered consecutively up to the end of the proceedings. In case of revision, the later proceedings are added at the end, and the numbering of pages carried on.

29. Care must be taken that the proceedings are both signed *and* dated by the president.

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THIRD APPENDIX.

App. III.

FORMS OF COMMITMENT.

FORM A.

*Form of Order for Commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.* Army Form C. 383.

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
was by a (a) \_\_\_\_\_ court-martial, held at \_\_\_\_\_  
convicted of the offence of \_\_\_\_\_ (b), and,  
by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_,  
sentenced (c) to suffer penal servitude, for \_\_\_\_\_ years,  
commencing on the aforesaid day, and such sentence has been \_\_\_\_\_  
confirmed by \_\_\_\_\_, as required by law.\* \*Add, if necessary, "with a remission of \_\_\_\_\_ years."

\*\*And whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of \_\_\_\_\_ years  
\_\_\_\_\_ days of the sentence had been undergone; and on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the sentence was ordered to be put into execution, to run consecutively with one of \_\_\_\_\_  
\_\_\_\_\_ concurrently awarded on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

C.D.

(a) Insert "general" or "field general" as required.  
(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.  
(c) Where the sentence was death, but has been commuted to penal servitude, substitute "to suffer death, and such sentence was confirmed by \_\_\_\_\_, as required by law, and was commuted to \_\_\_\_\_ years' penal servitude commencing on the aforesaid day."

## App. III.

## FORM B.

Army Form  
C. 564.

*Form of Order for commitment to prison of Military Convict sentenced in India or a Colony, or a Foreign Country, to Penal Servitude.*

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment was by a (a) \_\_\_\_\_ court-martial held at \_\_\_\_\_, convicted of the offence of \_\_\_\_\_ (b), and by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, sentenced (c) to suffer penal servitude for \_\_\_\_\_ years, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_, as required by law.\*

\*Add, if necessary, "with a remission of \_\_\_\_\_ years."

\*\*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

\*\*And whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of \_\_\_\_\_ years \_\_\_\_\_ days of the sentence had been undergone; and on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the sentence was ordered to be put into execution, to run \_\_\_\_\_ consecutively with one of \_\_\_\_\_, awarded on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [here state route], or such other route as may be directed by competent military authority, to the port at \_\_\_\_\_ or such other port as may be directed by competent military authority, thence to be removed by [here state route] to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any detention barrack, and also the governor or chief officer of any prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably

(a) Insert "general" or "field general" as required.

(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(c) Where the sentence was death, but has been commuted to penal servitude, substitute "to suffer death, and such sentence was confirmed by \_\_\_\_\_, as required by law, and was commuted to \_\_\_\_\_ years' penal servitude commencing on the aforesaid day."

necessary with the view to his said removal, and to deliver him App. III. when required for the purpose of such removal, and for so doing — this shall be sufficient warrant.

Signed at                      this                      day of                      , 19 .  
C.D.

*In case an Alteration of the Route above mentioned becomes necessary.*

(a). Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above mentioned, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [*here state the route so far as varied*] to , thence to be removed as directed by the said order.

Signed at                      this                      day of                      , 19 .  
E.F.

*In case of need the following Order may be made.*

For the purpose of carrying into effect the above order, I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of prison or detention barrack at , to receive the above-named convict, and to detain him until he can be removed to , and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      , 19 .  
G.H.

# FORM BB.

*Form of Order respecting a sentence of penal servitude passed for Army Form  
an offence committed on active service, where part of the sentence C. 384A.  
is ordered to be served in a military prison.*

Whereas [No.—Rank—Name], of the                      regiment, was by a (b)                      court-martial held at                      , convicted of the offence of (c)                      , and by a sentence signed on the                      day of                      , 19 , sentenced (d) to suffer penal servitude for                      years, commencing on the aforesaid day, and such sentence has been confirmed by                      as required by law.\*

\*Add, if necessary, "with a remission of years."

- (a) This order can be repeated by any removing authority as often as necessary.  
(b) Insert "general" or "field general" as required.  
(c) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.  
(d) Where the sentence was death, but has been commuted to penal servitude, substitute "so suffer death, and such sentence was confirmed by                      , as required by law, and was commuted to                      years' penal servitude commencing on the aforesaid day."

## App. III.

**\*\*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out all words not applicable.**

**\*\*And** whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of \_\_\_\_\_ years days of the sentence had been undergone; and on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the sentence was ordered to be put into execution, to run consecutively with one of \_\_\_\_\_, concurrently awarded on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

†A period not exceeding two years.

Now, therefore, I, the undersigned, the competent military authority, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, committed to a military prison in which a military prisoner sentenced to imprisonment by a court-martial can for the time being be confined, either temporarily or permanently, there to undergo† part of the said sentence, according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict shall, as soon as practicable after completion of the aforementioned part of his sentence or at such earlier date as the competent military authority may order, be transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo the remainder of his sentence according to law (a).

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.  
C.D.

## FORM C.

Army Form C. 385.

*Form of Order for commitment to Prison, Military or Civil (or to a detention barrack), of persons subject to military law sentenced either in or out of the United Kingdom to Imprisonment.*

To the Governor or chief officer in charge of (b) prison (or detention barrack) at \_\_\_\_\_

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment, was by a (c) \_\_\_\_\_ court-martial held at \_\_\_\_\_, convicted of the offence of (d) \_\_\_\_\_, and by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, sentenced \_\_\_\_\_

(a) Form B should be prepared by the competent military authority for the subsequent transfer of the military convict to a prison in the United Kingdom.

(b) Insert "His Majesty's," or as required according to title of prison.

(c) Insert "general," "field general" or "district," as required.

(d) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(a) to be imprisoned with <sup>\*hard labour for</sup> , commencing on the aforesaid day, and such sentence has been confirmed by , as required by law (b).

\*If the sentence does not specify hard labour alter "with"

\*\*And whereas on the day of , 19 , the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of years days of the sentence had been undergone; and on the day of 19 , the sentence was ordered to be put into execution, to run consecutively with one of , awarded on the day of , 19 .

into "without."

\*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said person into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at this day of , 19  
G.H.

# FORM D.

*Form of Order for commitment to a detention barrack of persons subject to military law as soldiers, sentenced either in or out of the United Kingdom to Detention.* Army Form C. 385A.

To the commandant or chief officer in charge of the detention barrack at

Whereas [No.—Rank—Name], of the regiment, was, by a (c) court-martial held at , convicted of the offence of (d) , and, by a sentence signed on the day of 19 , sentenced (e) to detention for commencing on the aforesaid day, and such sentence has been confirmed by as required by law (f).

(a) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into imprisonment for , with years' penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into imprisonment for \*hard labour, commencing on the aforesaid day."

\*If the commutation does not specify hard labour alter "with" into "without."

(b) Add, if necessary, "with a remission of , " or "but has been mitigated by the omission of the hard labour," or as the case may be.

(c) Insert "general," "field general," or "district," as required.

(d) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(e) Substitute, where the original sentence was death, penal servitude, or imprisonment, which has been commuted to detention, "to suffer death, and such sentence has been confirmed by , as required by law, but has been commuted into detention for , commencing on the aforesaid day," or "to suffer years, penal servitude, and such sentence has been confirmed by , as required by law, and has been commuted into detention for aforesaid day," or "to be imprisoned with (or without) hard labour for commencing on the aforesaid day, and such sentence has been commuted into detention for , commencing on the aforesaid day."

(f) Add, if necessary, "with a remission of ."

## App. III.

—  
\*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

\*And whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of \_\_\_\_\_ years days of the sentence had been undergone; and on the day of \_\_\_\_\_, 19\_\_\_\_, the sentence was ordered to be put into execution, to run consecutively with one of \_\_\_\_\_, awarded on the day of \_\_\_\_\_, 19\_\_\_\_.

Now, therefore, I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
G.H.

## FORM E.

Army Form  
C. 386.

*Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment, was by a (a) \_\_\_\_\_ court-martial held at \_\_\_\_\_ convicted of the offence of \_\_\_\_\_ (b), and by a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, sentenced (c) to be imprisoned with \_\_\_\_\_ \*hard labour for \_\_\_\_\_, commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_, as required by law (d).

\*If the sentence does not specify hard labour, alter "with" into "without."

\*\*This portion will only be used when a suspended sentence under Sec. 57A, A.A., is put into execution. Strike out and initial all words not applicable.

\*\*And whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the sentence was suspended by superior military authority under Section 57A of the Army Act, after a period of \_\_\_\_\_ years days of the sentence had been undergone; and on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the sentence was ordered to be put into execution, to run consecutively with one of \_\_\_\_\_, awarded on the day of \_\_\_\_\_, 19\_\_\_\_.

(a) Insert "general," "field general" or "district," as required.

(b) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place and circumstances.

(c) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by \_\_\_\_\_, as required by law, but has been commuted into imprisonment \_\_\_\_\_, with \_\_\_\_\_ \*hard labour, commencing on the aforesaid day," or "to suffer \_\_\_\_\_ years' penal servitude, and such sentence has been confirmed by \_\_\_\_\_, as required by law, and has been commuted into imprisonment \_\_\_\_\_, with \_\_\_\_\_ \*hard labour, commencing on the aforesaid day."

\*If the commutation does not specify hard labour, alter "with" into "without."

(d) Add, if necessary, "with a remission of \_\_\_\_\_," or "but has been mitigated by the omission of the hard labour," or as the case may be.



Now, therefore, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred to the United Kingdom and there committed to such prison or detention barrack as any other competent military authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison or detention barrack as aforesaid to whom the above soldier is brought, to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in civil custody, so far as appears necessary or proper for effecting his transfer to the said prison or detention barrack in the United Kingdom.

Signed at                      this                      day of                      , 19 .  
H.I.

*In case of a Committal to any intermediate Prison or Detention Barrack being necessary (a).*

For the purpose of carrying into effect the above Order, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the prison or detention barrack at  
to receive the said soldier and detain him until he can be transferred, in pursuance of the above order, and to deliver him when required for the purpose of such transfer, and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      , 19 .  
I.K.

*Order on arrival in United Kingdom of soldier sentenced to imprisonment.*

I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred to the prison or detention barrack at  
to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison or detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      , 19 .  
K.L

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(a) This order may be repeated as often as necessary by any authority having power to make it.

## App. III.

## FORM F.

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Army Form  
C. 388A.

*Form of Order respecting detention under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment  
was by a (a) \_\_\_\_\_ court-martial held at \_\_\_\_\_  
convicted of the offence of (b) \_\_\_\_\_ and by  
a sentence signed on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, sen-  
tenced (c) to detention for \_\_\_\_\_ commencing  
on the aforesaid day, and such sentence has been confirmed by  
as required by  
law (d).

\*This por-  
tion will only  
be used when  
a suspended  
sentence  
under Sec.  
57A, A.A., is  
put into  
execution.  
Strike out  
and initial  
all words not  
applicable.

\*And whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the sentence  
was suspended by superior military authority under Section 57A  
of the Army Act, after a period of \_\_\_\_\_ years \_\_\_\_\_ days of  
the sentence had been undergone; and on the \_\_\_\_\_ day of  
\_\_\_\_\_, 19 \_\_\_\_\_, the sentence was ordered to be put into execu-  
tion, to run consecutively with one of \_\_\_\_\_  
awarded on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Now, therefore, I, the undersigned, the competent military  
authority, do hereby, in pursuance of the Army Act, and of all  
other Acts and powers enabling me in this behalf, order that the  
said soldier shall be transferred to the United Kingdom and there  
committed to such detention barrack as any other competent  
military authority may appoint in this behalf, there to undergo  
his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers,  
order the commandant or chief officer of any such detention  
barrack as aforesaid to whom the above soldier is brought to receive  
the soldier into his custody and detain him accordingly, and for  
so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers,  
further order that the said soldier shall be conveyed in military  
custody and detained in military custody or in civil custody so  
far as appears necessary or proper for effecting his transfer to the  
said detention barrack in the United Kingdom.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

*E.F.*

(a) Insert "general," "field general," or "district," as required.

(b) If there are several offences, state all of them. An offence should be stated in the  
words of the charge on which the soldier was convicted, but if modified by the finding, as  
so modified; omitting the statement of particulars containing the details of time, place  
and circumstances.

(c) *Substitute*, where the original sentence was death, penal servitude, or imprisonment  
which has been commuted to detention, "to suffer death, and such sentence has been com-  
muted by \_\_\_\_\_ as required by law, but has been commuted into detention  
for \_\_\_\_\_ commencing on the aforesaid day," or "to suffer \_\_\_\_\_ years'  
penal servitude, and such sentence has been confirmed by \_\_\_\_\_ as required  
by law, and has been commuted into detention for \_\_\_\_\_ commencing on the  
aforesaid day," or "to be imprisoned with (or without) hard labour for \_\_\_\_\_  
commencing on the aforesaid day, and such sentence has been confirmed by \_\_\_\_\_  
as required by law, and has been commuted into detention for \_\_\_\_\_ commencing  
on the aforesaid day."

(d) *Add*, if necessary, "with a remission of \_\_\_\_\_."  
If the detention was awarded by the commanding officer, the form from "Whereas"  
down to "required by law," will be replaced by the corresponding provision in Form "G."

*In case of a Committal to any intermediate Detention Barrack being App. III.  
necessary (a).*

For the purpose of carrying into effect the above Order, I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act and of all other Acts and powers enabling me in this behalf, order the commandant or chief officer of the detention barrack at \_\_\_\_\_, to receive the said soldier, and detain him until he can be transferred, in pursuance of the above Order, and to deliver him when required for the purpose of such transfer, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
D.E.

*Order on Arrival of Soldier in United Kingdom.*

I, the undersigned, the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the said soldier to be transferred to the detention barrack at \_\_\_\_\_ to undergo his sentence according to law.

And I do hereby order the commandant or chief officer of that detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
D.E.

FORM G.

*Form of Commitment to Detention Barrack on award of Detention* Army Form  
*by Commanding Officer.* C. 308.

To the commandant or officer or non-commissioned officer in charge of the detention barrack at \_\_\_\_\_

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment, was on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ , awarded by his commanding officer detention for \_\_\_\_\_ for the offence of \_\_\_\_\_ of \_\_\_\_\_

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
D.E.

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(a) This order may be repeated as often as necessary by any authority having power to make it.

## App. III.

## FORM H.

Army Form *Order for Release of Persons subject to Military Law undergoing*  
C. 389. *Imprisonment.*

To the governor, commandant, or chief officer of  
prison or detention barrack at

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now in your custody under a sentence of imprisonment by  
court-martial.

I, the undersigned, being the competent military authority,  
do hereby order you to release the said soldier.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

E.F.

## FORM I.

Army Form *Order for Release of Persons subject to Military Law as Soldiers*  
C. 389A. *undergoing Detention.*

To the commandant or chief officer of the  
detention barrack at

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now in your custody under a sentence of detention by court-  
martial.

I, the undersigned, being the competent military authority,  
do hereby order you to release the said soldier.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

E.F.

## FORM J.

Army Form *Form of Releasing Order in case of Detention under the Award of*  
C. 390. *Commanding Officer.*

To the commandant or officer or non-commissioned officer in  
charge of the detention barrack at

You are hereby required to release the soldier [No.—Rank—  
Name], of the \_\_\_\_\_ regiment, now in your custody  
undergoing his sentence pursuant to the award of his commanding  
officer.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

C.D.

Commanding Officer of the above Soldier.

FORM K.

App. III.

*Order for delivery into military custody of a Soldier undergoing Army Form Imprisonment.* C. 301.

To the governor or chief officer of \_\_\_\_\_ prison  
or detention barrack at \_\_\_\_\_

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now in your custody undergoing a sentence of imprisonment  
passed by court-martial.

I, the undersigned, being the competent military authority,  
do hereby in pursuance of the Army Act, and of all other Acts  
and powers enabling me in this behalf, order you to deliver the  
said soldier to the officer or non-commissioned officer bringing  
this order.

And I do hereby order the said officer or non-commissioned  
officer, and all other officers and non-commissioned officers into  
whose custody the said soldier may be delivered, to keep the said  
soldier in military custody and bring him to  
there to \*

\*State the  
purpose for  
which the  
military  
prisoner is  
required.

and then to return him to the above-named prison (or detention  
barrack), or to such other prison (or detention barrack) as may be  
determined by the competent military authority, and to detain  
him in military custody until he is so returned or is released in  
due course of law, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

C.D.

*If the Prison (or Detention Barrack) to which he is returned is altered.*

I, the undersigned, being the competent military authority,  
do hereby in pursuance of the Army Act, and of all other Acts and  
powers enabling me in this behalf, order that he be forthwith  
returned in military custody to \_\_\_\_\_ prison (or  
detention barrack) at \_\_\_\_\_, there to undergo  
the remainder of his sentence.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

C.D.

FORM L.

*Order for delivery into military custody of a Soldier undergoing Army Form Detention.* C. 301A.

To the commandant or chief officer of the detention barrack at \_\_\_\_\_

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now in your custody, undergoing a sentence of detention passed  
by court-martial (a) ;

(a) If necessary, substitute "awarded by his commanding officer."

App. III. I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

\*State the purpose for which the soldier is required.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to

there to\*  
and then to return him to the above-named detention barrack, or to such other detention barrack as may be determined by the competent military authority, and to detain him in military custody until he is so returned, or is released in due course of law, and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      , 19 .

C.D.

*If the Detention Barrack to which he is returned is altered.*

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to the detention barrack at there to undergo the remainder of his sentence.

Signed at                      this                      day of                      , 19 .

C.D.

#### FORM M.

Army Form C. 392. *Order for Removal of Soldier undergoing Imprisonment for Embarkation.*

To the governor or chief officer of                      prison  
(or detention barrack) at

Whereas [No.—Rank—Name], of the                      regiment,  
is now in your custody undergoing a sentence of imprisonment  
passed by court-martial.

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the                      regiment, to which he belongs is serving (a), and for so doing this shall be sufficient warrant.

Signed at                      this                      day of                      , 19 .

J.K.

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(a) If necessary, substitute "under orders to serve."

FORM N.

App. III.

*Order for Removal of Soldier undergoing Detention for Embarkation.*

Army Form  
C. 392A.

To the commandant or chief officer of the detention barrack at

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment, is now in your custody undergoing a sentence of detention passed by court-martial (a).

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to \_\_\_\_\_ where the \_\_\_\_\_ regiment to which he belongs is serving (b) and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
J.K.

FORM O.

*Order for Transfer of Soldier from one Prison (or Detention Barrack) to another.* Army Form  
C. 393.

To the governor or chief officer of \_\_\_\_\_ prison (or detention barrack) at \_\_\_\_\_

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the competent military authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and convey him in military custody in such manner as may be directed by military authority, to the \_\_\_\_\_

prison (or detention barrack) at \_\_\_\_\_ there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
D.E.

(a) If necessary, substitute "awarded by his commanding officer."

(b) If necessary, substitute "under orders to serve."

## App. III.

## FORM P.

Army Form  
C. 393 A. *Order for transfer of a person subject to Military Law as a Soldier  
undergoing Detention from one Detention Barrack to another.*

To the commandant or chief officer of the detention barrack at

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now in your custody, undergoing a sentence of detention passed  
by court-martial (a) ;

I, the undersigned, being the competent military authority,  
do hereby in pursuance of the Army Act, and of all other Acts  
and powers enabling me in this behalf, order you to deliver the  
said soldier to the officer or non-commissioned officer presenting  
this order.

And I do hereby order the said officer or non-commissioned  
officer, and all officers and non-commissioned officers into whose  
custody the said soldier may be delivered, to keep the said soldier  
in military custody, and convey him in military custody in such  
manner as may be directed by military authority, to the detention  
barrack at \_\_\_\_\_, there to undergo the remainder of  
his sentence, and for so doing this shall be sufficient warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

D.E.

## FORM Q (b).

Army Form  
C. 396.

*Form of order for temporary custody in Prison or Lock-up.*

To the governor or chief officer of \_\_\_\_\_ prison at \_\_\_\_\_ (c).

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now a soldier in military custody.

Now therefore, I, the undersigned, the commanding officer of  
the said soldier, do hereby in pursuance of the Army Act, and of all  
other Acts and powers enabling me in this behalf, order you to  
receive the said soldier into your custody, and detain him until  
you receive a further order from me, but not longer than seven  
days, and for so doing this shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

J.K.

(a) If necessary, substitute: "awarded by his commanding officer."

(b) This form can be used only in the case of a soldier as defined by the Army Act.

(c) Substitute, if necessary, "\_\_\_\_\_ officer in charge of the police station (or other place)"  
at \_\_\_\_\_.



FORM R.

App. III.

*Form of Commitment to Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial.* Army Form B. 72.

To the officer or non-commissioned officer in charge of the detention barrack at

Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment, [has been remanded for trial by court-martial] (a) or [was on the day of \_\_\_\_\_, 19\_\_\_\_, tried by court-martial for the offence of \_\_\_\_\_], and is awaiting [trial] (a) or [the promulgation of the finding and sentence of the court].

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the King's Regulations for the Army, enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

You will take care that the said soldier wears his regimental clothing and necessities, that he is allowed to exercise during a reasonable portion of each day in association, if possible, but that he is kept apart from soldiers undergoing sentences, and that he receives the ordinary rations and messing of a soldier. He should not be obliged to labour otherwise than by being employed in drill fatigue and other duties similar in kind and amount to those he might be called on to perform if not in confinement.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature)

FORM S.

*Form of Releasing Order in case of Confinement in Detention Barrack for safe Custody while awaiting Trial by, or Sentence of, Court-Martial.* Army Form B. 94.

To the officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to deliver over the soldier [No.—Rank—Name], of the \_\_\_\_\_ regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature)

Commanding Officer of the above soldier.

(a) NOTE.—The forms should be altered to meet cases of confinement before and after the trial respectively by erasing the words not applicable.

## App. III.

## FORM T.

*Order for the Removal in Military Custody of a Deserter or Absentee without leave awaiting Escort.*

Army Form  
O. 1797.

To the governor or chief officer of \_\_\_\_\_ prison.  
Whereas [No.—Rank—Name], of the \_\_\_\_\_ regiment,  
is now in your custody as a deserter or absentee without leave  
awaiting escort, I, the undersigned, being \_\_\_\_\_  
do hereby order you to deliver the said prisoner to the escort  
producing this authority.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

D.E.

## FORM U.

*Form of Commitment of Person guilty of Contempt of a Court-Martial under s. 28 of the Army Act.*

To the officer or non-commissioned officer in charge of the  
prison [or detention barrack] at \_\_\_\_\_

Whereas a court-martial for the trial of \_\_\_\_\_, of which  
I, the undersigned, am president, was on this day sitting at \_\_\_\_\_  
and \_\_\_\_\_ of the \_\_\_\_\_ Battalion,

Regiment, was guilty of contempt of the court  
by using insulting language [or by using threatening language], [or  
by causing an interruption in the proceedings of such court, or  
as the case may be] namely by [here describe the act of which the  
offender was guilty].

And whereas the said court did order the above-named offender  
to be imprisoned [or to undergo detention] for \_\_\_\_\_ days.

Now, therefore, the court doth order you to receive the said  
offender into your custody for safe custody, and for so doing this  
shall be your warrant.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signature) \_\_\_\_\_ A.B.,

President of the above Court-Martial.

# **Rules for Field Punishment.**

## **RULES FOR FIELD PUNISHMENT MADE UNDER SECTION 44 OF THE ARMY ACT.**

1. A court-martial, or a commanding officer, may award field F. P. Rules. punishment for any offence committed on active service, and may sentence an offender to such punishment for a period not exceeding, in the case of a court-martial, 3 months, and in the case of a commanding officer, 28 days.

2. Where an offender is sentenced to field punishment he may, during the continuance of his sentence, unless the court-martial or the commanding officer otherwise directs, be punished as follows :—

- (a) He may be kept in irons, i.e., in fetters or handcuffs, or both fetters and handcuffs ; and may be secured so as to prevent his escape.
- (b) Straps or ropes may be used for the purpose of these rules in lieu of irons.
- (c) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under sentence of imprisonment with hard labour.

3. Every portion of a field punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender ; and a portion of a field punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

4. Field punishment will be carried out regimentally when the unit to which the offender belongs or is attached is actually on the move, but when the unit is halted at any place where there is a provost marshal, or an assistant provost marshal, the punishment will be carried out under that officer.

5. When the unit to which an offender under sentence of field punishment belongs or is attached is actually on the move, such offender shall march with his unit, carry his arms and accoutrements, perform all his military duties as well as extra fatigue duties, and be treated as a defaulter.

(Signed) DERBY.

The War Office,  
13th October, 1923.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 44 of the said Act.

(Signed) H. F. OLIVER.  
A. D. BOYLE.

Admiralty,  
19th October, 1923.

## Forms of Court-Martial Warrants.

The following Forms are at present in use :—

Warrants. I.—*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene General Courts-Martial.*  
(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We hereby authorise you, from time to time as occasion may require, to convene General Courts-Martial for the trial of any persons subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against Military Discipline, whether such offence shall have been committed before or after you shall have taken upon yourself your Command. The said Courts-Martial shall be constituted, and shall proceed in the trial of the offenders, and in giving sentence and awarding punishment, according to the powers and directions contained in the said Act.

We are further pleased to order that the proceedings of every such Court-Martial shall be transmitted to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon.

And for so doing, this shall be, to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at this  
day of 19  
in the Year of Our Reign.

By His Majesty's Command.  
(Signature of Secretary of State).

To  
The General  
or Officer Commanding the Forces (Home).

II.—*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene and confirm General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the Command; and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer death, penal servitude or imprisonment, or to be cashiered or dismissed from Our Service, or a soldier has been sentenced to suffer death or penal servitude, you shall in such case, and also in the case of any other General Court-Martial in which you shall think fit so to do, transmit the proceedings to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us for Our decision thereupon.

And for executing the several powers, matters and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at  
day of  
in the

this  
19

Year of Our Reign.

By His Majesty's Command.

(Signature of Secretary of State.)

To

The General,  
or Officer Commanding-in-Chief,  
Command.

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III.—*Form of Warrant under the Sign-Manual enabling Commander-in-Chief in India to convene and confirm the findings and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your command, who shall be charged with any offence against the provisions of the said Act; and We hereby further authorise you to confirm the proceedings of any courts-martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your warrant to any Officer under your command, not under the rank of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such Officer shall have taken upon him his command, and also to exercise in respect of the proceedings of such courts-martial the power of confirming the findings or sentences thereof in accordance with the said Act; or if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such courts-martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

Warrants.

We also hereby authorise you in any case in which you shall think fit so to do, to transmit the proceedings of any General Court-Martial to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate at any Court-Martial for the more orderly proceedings of the same.

And for enforcing the sentence of every such Court-Martial, We do also give you authority to appoint and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at \_\_\_\_\_ this  
day of \_\_\_\_\_ 19  
in the \_\_\_\_\_ Year of Our Reign.

By His Majesty's Command.

(Signature of Secretary of State.)

To

*The General or Officer for the time being  
Commanding in Chief  
The Forces in the East Indies.*

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IV.—*Form of Warrant under the Sign-Manual enabling the Officer Commanding the Forces in a Colony, or elsewhere out of the United Kingdom, except in India, to convene and confirm the finding and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the Command; and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to

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NOTE.—The warrant for the Commander-in-Chief on active service often follows Form III above.

cause any sentence thereof to be put in execution, according to the <sup>Warrants.</sup> provisions of the said Act.

And We do hereby further authorise you to direct your Warrant to any Officer under your command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial, for the trial, under the said Act, of any such persons subject to Military Law, as are for the time being under or within the territorial limits of his Command, whether the offences shall have been committed before or after such Officer shall have taken upon him his Command, and also to exercise, in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act ; or, if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such Courts-Martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer, other than a native Commissioned Officer, has been sentenced to suffer Death, or Penal Servitude, or to be cashiered or dismissed from Our Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, transmit the proceedings to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us, for Our decision thereupon.

Provided also that if by the sentence of any General Court-Martial a native Commissioned Officer has been sentenced to suffer Death or Penal Servitude or to be cashiered or dismissed from Our Service, you shall in such case require the proceedings to be reserved for your confirmation, or, if you shall so think fit, for transmission to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate of any Court-Martial for the more orderly proceedings of the same.

And for enforcing the sentence of any such Court-Martial. We do also give you authority to appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

Warrants.

— And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_  
in the \_\_\_\_\_ Year of Our Reign.

By His Majesty's Command,  
(*Signature of Secretary of State.*)

To

*The General or Officer for the time being  
Commanding the Forces at*

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V.—*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene [and confirm] General Courts-Martial.*

Army Form To  
A 1.

Whereas I am empowered by Warrant of His Majesty to direct my warrant to any Officer under my command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial under the Army Act, of any person under the command of such last-mentioned officer who is subject to Military Law, and also to execute (subject to the provisions of the said Warrant) in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or of directing him to reserve for my confirmation the proceedings of all or any such Courts-Martial.

By virtue of the said Warrant, I do hereby authorise and empower you \*[or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer] from time to time, as occasion may require, to convene General Courts-Martial for the trial, in accordance with the said Act and the rules made thereunder, of any person under your command who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial.

†And I do hereby empower you \*[or the officer on whom your command may devolve during your absence, not under the rank of Field Officer] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

‡Provided always that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer Death, Penal Servitude, or to be cashiered or dismissed from the Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to me.

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\* May be omitted.

† This clause to be omitted if the power of confirmation is wholly reserved.



And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, I hereby further empower you, in default of a person appointed by His Majesty, or deputed by the Judge-Advocate-General of His Majesty's Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint a fit person from time to time for executing of the office Judge-Advocate of any Court-Martial for the more orderly proceedings of the same.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at  
this \_\_\_\_\_ day of \_\_\_\_\_  
Signature of General Officer }

By Command.  
Signature of }  
Staff Officer }

**VI.—Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene District Courts-Martial.**

To \_\_\_\_\_ Army Form  
AA

Whereas I am empowered by Warrant to convene General Courts-Martial, and whereas under the Army Act, any Officer or person authorised to convene General Courts-Martial may empower any person under his command not below the rank of Captain, to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Military Law.

By virtue of the said Act and Warrant, I do hereby authorize and empower you \*[or the Officer on whom your command may devolve during your absence, not under the rank of

from time to time as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

†And I do hereby empower you \* [or the Officer on whom your command may devolve during your absence, not under the rank of ] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at  
this \_\_\_\_\_ day of \_\_\_\_\_  
Signature of \_\_\_\_\_  
General Officer \_\_\_\_\_

By Command.  
Signature of Staff Officer }

\* May be omitted or varied in accordance with the terms of the Army Act, s. 122.  
† This clause to be omitted if the power of confirmation is wholly reserved.

## Form of Application for a Court-Martial.

Army Form  
B. 116.

*Regiment.*  
Date 19  
*Court-Martial.*

Station  
*Application for a*

SIR,  
I have the honour to submit charge against  
No. of the under my command, and request you will  
obtain the sanction of that a  
Court-Martial may be assembled for his trial at  
The case was investigated by (a)  
A Court of Inquiry was held on (b) (date)  
at (Station).

President  
Members { Ranks, names and corps.

The accused is now at His General Character is (c)  
I enclose the following documents (d) :—  
1. Charge-Sheet (in duplicate) (e).  
2. Summary of Evidence, original (f) and copy.  
copies.  
3. Original Exhibits (g).  
4. List of witnesses for the prosecution and defence (with their  
present stations or addresses) (g).  
5. List of Exhibits (h).  
6. Correspondence (g).  
7. Statement as to character (A.F. B.296) and regimental and  
company, &c., conduct sheets of accused (g).  
8. Statement by accused as to whether or not he desires to have  
an officer assigned by the Convening Officer to represent him at the  
trial [R.P. 14 (B)] (h).

I have the honour to be,

Sir,

Your obedient Servant,

*Signature of*  
*Commanding Officer* }

To

## MEDICAL OFFICER'S CERTIFICATE.

I certify that No. , Regiment, is \*  
to undergo trial by Court-Martial.

*Signature of the Medical Officer*

\* Insert  
"fit" or  
"unfit."

- (a) Here insert name of :—  
(i) Officer who investigated the charges.  
(ii) Company, &c., Commander who made preliminary enquiry into the case.  
(iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].  
(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with  
the charges; otherwise to be struck out [R.P. 19 (B) (iii)].  
(c) To be filled in by the Commanding Officer.  
(d) Any items not applicable to be struck out.  
(e) One copy to be sent to the President; one copy to be filed with the application for trial.  
(f) Original summary of evidence to be sent to the President.  
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the  
notice of trial.  
(h) 5 and 8 to be sent to the President.  
(If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the  
top of this form.)

**Communication to an Accused Person upon whom a Sentence of Death has been Passed by Court-Martial. \***

Army Form  
A 8996

To

The Court have found you guilty of the following charges

out not guilty of the following charges

The Court have passed a sentence of death upon you.

The Court have made <sup>a</sup>no recommendation to mercy in the following terms.

You should clearly understand :—

- (i) That the finding or findings and sentence are not valid until confirmed by the proper authority.
- (ii) That the authority having power to confirm the finding or findings and sentence may withhold confirmation of the finding or findings, or may withhold confirmation of the sentence, or may mitigate, commute or remit the sentence, or may send the finding or findings and sentence back to the Court for revision.

If you do not clearly understand the foregoing you should request to see an officer, who will fully explain the matter to you.

President,  
Court-Martial

Place.  
Date.

**Instructions regarding the Suspension and Review of Sentences Awarded by Courts-Martial.†**

**PART I.—SUSPENSION OF SENTENCES AND REVIEW OF SUSPENDED SENTENCES.**

1. *Some remarks on section 57A of the Army Act.*—(a) Under subsection 2 (a) of section 57A of the Army Act, a superior military authority may issue general instructions that no soldier sentenced to penal servitude, imprisonment or detention shall be committed to prison or detention barracks until his orders have been ascertained.

If such general instructions have been issued, the officer confirming a sentence of penal servitude, imprisonment or detention must defer committing the soldier to undergo his sentence until the directions of the superior military authority have been taken.

(b) If the superior military authority has not issued any such general instructions, then under subsection (1) the confirming

\* See R.P., App. II, footnote (b) on page 762.

† Originally issued as Army Council Instruction No. 400 of 1901.

authority may exercise his discretion (except as laid down in para. 5 below), and if he confirms a sentence of penal servitude, imprisonment or detention, can either (i) let the man be committed in the ordinary way to undergo his sentence, or (ii) refer the case to the superior military authority if he considers such a course desirable.

(c) Under subsection (5) a suspended sentence must be reviewed every 3 months and may be reviewed more often.

(d) It should be noted that, where a sentence immediately after its award is referred to a superior military authority for decision as to whether it shall be suspended or not, if the sentence is put into execution it will run as from the date of award; whilst if it is suspended no part of the sentence is deemed to have been performed (subsection (3)).

Where a sentence already in suspension is put into execution, the sentence is deemed to run as from the date ordering it to be put into execution, and where a sentence in execution is remitted or suspended its currency is deemed to end on the day on which the man is actually released (subsections (4) and (6)).

It is important therefore that these dates should always appear on A.F. A 8104.

(e) The powers under section 57A in no way affect the powers of a confirming or reviewing authority under section 57 of the Army Act, but, by virtue of subsection (8) of section 57A, every superior military authority is a reviewing authority under section 57, whether the soldier is undergoing his sentence within his command or not.

(f) Every superior military authority will keep a list of officers whom he appoints to be competent military authorities under section 57A, and superior military authorities in the United Kingdom will send a copy of this list and notify any alterations therein to the War Office in order that officers i/c records may be informed. Appointments should be made to the holders of certain appointments and not to officers by name, *e.g.*, to the general or officer commanding, 1st Division, and not to Major-General Browne, Commanding 1st Division.

In the United Kingdom all officers to whom the power to convene and confirm District Courts-Martial has been delegated, will be appointed competent military authorities provided their rank is not lower than that of field officer.

**2. Notes for guidance of officers considering sentences under section 57A.**—(a) The considerations which guide an officer in deciding whether or not it is advisable to suspend a sentence immediately after trial are many and vary with the discipline of the force under his command, the nature of the duties on which it is engaged and the character of the man concerned.

Suspension of sentence is primarily applicable to offences of a military nature only, although in special cases it may be applied to offences of a civil character.

In all cases special attention must be directed to the following points :—

- (i) The age and previous character of the soldier.
- (ii) Whether the offence is a first one.
- (iii) Whether the offence was premeditated.

- (iv) Whether the soldier was at the time subjected to any special stress, fatigue, disability or temptation.
- (v) Whether the soldier was influenced by others older or of worse character than he.

On active service additional considerations may arise. For example, some men may deliberately commit crimes in the hope that a long sentence may enable them to avoid doing duty with their units, whilst others may commit grave military offences through momentary loss of control over their nerves and without any real wrongful intent. It must further be remembered that, except on active service, a sentence of penal servitude or imprisonment will usually entail discharge from the army, and that, therefore, a sentence of penal servitude or imprisonment, not on active service, should not usually be suspended unless it is commuted to detention.

Each case, therefore, must be considered on its merits, it being remembered that the system of suspension of sentence is designed, on the one hand, to ensure instant punishment for those who properly deserve it, and, on the other hand, to postpone, and often entirely to avoid, punishment for those whose offences, though serious, are such as may in the circumstances not call for immediate committal to prison; the power of suspension of sentence places in the hands of the commander a means of clemency and within reach of the soldier an opportunity to redeem his character.

(b) Upon review of an already suspended sentence other considerations arise. All that need be considered then is the gravity of the offence of which the soldier was convicted, his previous character and his conduct since conviction. As a general rule, it may be said that the more grave the offence and the worse his character before conviction the longer is the period required to prove whether the soldier is honestly trying his best to redeem himself and that only acts of conspicuous merit (such as bravery or devotion to duty in action or, in peace time, such conduct as is referred to in para. 1630 (b) (xvii), King's Regulations) would justify a remission of sentence without regard to the length of the period during which it had been suspended.

Apart from such special acts, remission of sentence would be justified (no partial remissions of a sentence in suspension are allowed under section 57A) if the soldier has by his consistent good conduct really shown that he has done his utmost to retrieve his character and become a good and efficient soldier. Promotion to a higher rank should always be regarded as sufficient proof of good conduct to justify remission.

Unsatisfactory conduct subsequent to suspension will justify an order to put a suspended sentence into execution, whilst a mere negative abstention from crime would point to the advisability of directing a reconsideration of the sentence at a later date.

In considering a case reports must always be obtained from the soldier's C.O. and attached with a copy of the soldier's company or field conduct sheet to A.F. A 3104 for future reference.

It is desirable that some intimation of the reason actuating the superior or competent military authority in his decision upon review should, if possible, be communicated to the soldier.

Attention is drawn to para. 652 (f), King's Regulations; a suspended sentence of imprisonment or penal servitude should not, except on active service, be put into execution without first being commuted to detention unless it is intended that the soldier should be discharged from the army for misconduct.

(c) A soldier under a suspended sentence is to be regarded entirely as a free man and is to be placed under no disability whatever excepting only the liability of having his suspended sentence put into execution if he misbehaves.

3. *Procedure after trial when the case is referred to a superior military authority.*—(a) A confirming authority upon receipt of the proceedings of a trial will consider whether (i) he wishes to recommend suspension of the sentence to the superior military authority, or (ii) he is bound to refer the case to the superior military authority under para. 5 below or under the general instructions referred to in para. 1 (a) above. If the confirming authority decides to recommend the sentence for suspension or is bound to refer the case to the superior military authority, he will, when returning the proceedings to the unit for promulgation attach A.F. A 3104, having filled in para. 1 as far as possible.

At the same time the confirming authority will direct that the man be not committed to undergo his sentence pending further orders.

The O.C. unit will complete paras. I, VII and IX of A.F. A 3104 and return it with the proceedings to the confirming authority who will complete paras. II and X of the form and forward it with his remarks through the usual channels to the superior military authority.

(b) The superior military authority will telegraph his decision direct to the confirming authority who will at once take the necessary action to commit the man to undergo his sentence in the ordinary way or to release him and ensure that the necessary entries as to suspension are made in the documents referred to in para. 8 (b).

(c) The superior military authority will at the same time despatch through the usual channels A.F. A 3104, having filled in para. III, and the proceedings to the confirming authority. The proceedings will subsequently be disposed of by the confirming authority in the usual way and the A.F. A 3104 will be passed through the O.C. unit to the authority directed to hold it (see Part III).

(d) A sentence of penal servitude or imprisonment coupled with discharge with ignominy cannot be suspended unless the discharge with ignominy is remitted.

4. *Three-monthly review of sentences under suspension.*—(a) Every sentence under suspension must be reviewed at intervals of not more than 3 months and may be reviewed more frequently.

This review will be carried out by the competent military authority (if there is none, by the superior military authority) under whose command the man is serving, to whom A.F. A 3104 will be sent by the authority laid down in Part III, 14 days before the review is legally due, through the O.C. unit with which the man is serving, who will attach reports as to the conduct of the

man since suspension and copies of his company or field conduct sheet.

(b) The competent military authority may himself remit the sentence or direct that it be brought forward again at a date not more than 3 months ahead, which will be entered by him in paras. VI or XI of A.F. A 3104.

He will notify his decision to the O.C. the unit concerned and will ensure that in the case of a remission the necessary entries are made in the documents mentioned in para. 8 (b).

(c) If the competent military authority considers that the sentence should be put into execution he will submit A.F. A 3104 to the superior military authority, and the procedure will then be as laid down in para. 3 (b) and (c) except that the place of the confirming authority will be taken by the competent military authority.

(d) Cases may arise in which a competent military authority may desire without any delay to remit a suspended sentence on the spot for some specially meritorious act on the part of the soldier. In such cases it will be sufficient if the competent military authority notifies his decision to the man and his C.O. and subsequently at the first opportunity secures A.F. A 3104 and takes the other action laid down in sub-paras. (b) and (e) of this para.

If on the other hand it is desired at any time before the three-monthly review to put a suspended sentence into execution the C.O. must at once wire for A.F. A 3104 and transmit it with his recommendation through the competent military authority, if one exists, for the decision of a superior military authority, who will act on the principle indicated in para. 3 (b).

(e) When all action on review has been taken the competent military authority will despatch A.F. A 3104 (ensuring that it is correctly completed) through the C.O. to the authority directed to hold it in Part III. If a sentence which is put into execution has been in execution before, A.F. A 3104 will be also passed through the O.C. detention barracks or governor of the prison to which the soldier is committed in order to inform him of the number of marks earned towards remission (if any).

**5. Trial of a soldier already under a suspended sentence.**—If a soldier under a suspended sentence is again to be tried by court-martial, the O.C. unit will telegraph to the authority holding A.F. A 3104 for its immediate despatch to him and will forward it (with application for trial if possible) to the convening authority.

The convening authority will attach this form to the proceedings before returning them for promulgation.

In a case such as this, reference will invariably be made to the superior military authority, whose attention is drawn to sub-section (7) of section 57A of the Army Act. The procedure generally will be as laid down in para. 3.

If a soldier is committed to undergo a sentence, as a rule any previously suspended sentence should also be put into execution to run either concurrently or consecutively with the later sentence.

**6. Removal of a soldier under suspended sentence from command of one competent military authority to that of another.**—If a soldier under suspended sentence is transferred from the command of one competent military authority to that of another *just before or after* A.F. A 3104 has been received from the authority holding

that document, the former competent military authority will consider the man's conduct up to the date upon which he left his command and will attach his remarks to A.F. A 3104 which he will forward through the authority directed to hold that form to the new competent military authority who will act as directed in para. 4.

7. *Transfer of soldier under suspended sentence from United Kingdom to overseas and vice versa.*—When a soldier under suspended sentence is transferred from the United Kingdom to a station overseas, from a station overseas to United Kingdom, or from one station overseas to another station overseas, the authority directed to hold the A.F. A 3104 in the old station will *at once* pass the form to the authority directed to hold it in the new station.

8. *Completion of A.F. A 3104 and entries to be made in documents.*

(a) The various paras. in A.F. A 3104 are self-explanatory, but care must be taken that they are correctly filled up in each case, the dates of entries being especially important; see para. 1 (d).

Entries in A.F. A 3104 may generally be signed by a staff officer for the superior or competent military authority although the latter is responsible for the decision; but where the decision is to put the sentence into execution the direction to do this must be signed by the superior military authority himself. The various conduct reports, &c., upon the man will be pasted to the form where marked, for reference on further reviews.

(b) Entries will invariably be made in the following documents, giving dates and authority, whenever:—

A sentence is suspended, remitted, commuted or mitigated;

A suspended sentence is remitted, or

A suspended sentence is put into execution;

as they are casualties affecting a soldier's service.

#### *On Active Service.*

(i) Field Conduct Sheet (see para. 1637, King's Regulations).

(ii) A.B. 64, Part I, under "Miscellaneous Entries."

(iii) A.F. W 3011.

(iv) Part II of Orders.

(v) A.F. B 103.

(vi) Statement of Service (para. 1621 (x1), King's Regulations).

(vii) Regimental Conduct Sheet (see para. 1630 (b) (xviii), King's Regulations).

#### *In Peace.*

As in (ii), (iv), (vi) and (vii) above, and also in the company conduct sheet (see para. 1634, King's Regulations).

9. *Miscellaneous.*—(a) When a soldier serving at home under a suspended sentence becomes due for discharge, disembodiment, transfer or relegation to the Reserve, the O.C. the unit with which the man is serving is responsible for bringing the case to the notice of the superior (or competent) military authority one month before the man leaves his unit and that authority will as a general rule remit the sentence.

If, however, it is considered that in the interest of discipline the suspended sentence ought to be put into execution the case must



be referred to a superior military authority who will, if he decides to put the sentence into execution, take steps to carry out his decision and to notify the War Office at once of his action, giving the date of the soldier's last trial.

If a soldier under a suspended sentence serving overseas is due to be sent home for discharge or transfer to the Reserve, the O.C. the unit with which he is serving overseas will take steps to ensure that the case is brought to the notice of the superior (or competent) military authority for decision on the lines indicated above, one month before the soldier embarks for the United Kingdom.

In the case of a soldier in hospital who is to be invalidated from the service, the O.C. hospital, being O.C. the unit with which the man is serving, will be responsible for bringing to the notice of the superior (or competent) military authority the existence of any suspended sentence under which the soldier may be, before the soldier, if serving at home, is invalided, or if serving overseas, is sent home for the purpose of being invalided.

Where, owing to the circumstances of the case, it is impossible to give the month's notice referred to above, the O.C. unit will be responsible that the longest possible notice is given and that the question of the disposal of the suspended sentence is submitted at once to the proper authority.

(b) If a soldier is committed to prison under two sentences, a separate committal warrant will be made out in respect of each sentence.

(c) If a soldier whilst undergoing field punishment or confinement to barracks is sentenced to penal servitude, imprisonment or detention, which sentence is suspended, the previous sentence of field punishment or confinement to barracks may be carried out and will not affect the currency of the suspended sentence.

(d) Any consequence of a conviction or sentence and any part of a sentence which would have taken immediate effect if no part of the sentence had been suspended will take immediate effect notwithstanding suspension, *e.g.*, reduction to the ranks under section 183 (4) of the Army Act, fines and stoppages.

#### 10. [Omitted.]

### PART II.—REVIEW OF SENTENCES IN EXECUTION.

11. *Review of sentences in execution upon men not discharged from the Army.*—(a) It has been decided that sentences in execution upon men who are not discharged from the army shall be reviewed at intervals of not more than six months and may be reviewed more frequently. In the case of this six-monthly review A.F. A 3104 will be sent 14 days before this date arrives by the authority who is responsible (*see* Part III) for bringing the case forward for review to the competent military authority (if none, to the superior military authority) in whose command the man's unit is serving. If the sentence has never been considered for suspension and therefore no A.F. A 3104 for the soldier exists the authority responsible for holding such form if one existed (*see* Part III) will prepare one in accordance with the note below.

NOTE.—The authority directed to hold the document will prepare A.F. A 3104 by completing paras. I and VII and cancelling paras. II, III, IX and X. He will initial the parts struck out, and will stamp para. II. with his office stamp. Action on review will be recorded in para. VI.

If any sentence is reviewed before the expiration of six months the authority instituting the review will ask the authority holding A.F. A 3104 to forward it to him. The competent (or superior) military authority will secure a report of the man's conduct from the governor or commandant of the place in which the sentence is being served, and from the O.C. the unit to which the man belongs as to the desirability or otherwise of any remission or suspension.

(b) If, after reference by the competent military authority to the superior military authority, the sentence is suspended the competent military authority will take the necessary steps to secure the man's release and to ensure that the necessary entries in documents are made (*see* para. 8 (b)).

The competent military authority will despatch A.F. A 3104 duly completed to the authority directed to hold it, through the commandant or governor under whom the sentence was being served in order that the latter may enter on the form the actual date of release and the number of marks earned towards remission.

(c) If the competent military authority considers that the residue of the sentence should be remitted, and if he is himself qualified to remit it under section 57 of the Army Act, he will remit it. If the competent military authority is in doubt or is not himself qualified to remit it, he will refer it to the superior military authority with his recommendation. In either case, if the sentence is remitted, the competent military authority will take the necessary action to secure the man's release and, when A.F. A 3104 is completed, will despatch it to the authority directed to hold it (*see* Part III) and will ensure that the necessary entries in documents are made (para. 8 (b)).

(d) If the competent military authority marks the sentence for further review at a later date, he will, after making an entry to this effect in A.F. A 3104, despatch it to the authority directed to hold it until the next review.

(e) It must be noted that although no partial remission of a sentence *in suspension* under section 57A is allowed, yet a partial remission of a sentence *in execution* may legally be made under section 57 (2) of the Army Act.

(f) In reviewing a sentence which is in execution the opinion of the governor or commandant of the place in which the sentence is being undergone is invariably to be obtained and his opinion as to whether the sentence should be suspended, remitted, mitigated or commuted should be carefully considered by superior or competent military authorities under section 57A or reviewing authorities under section 57 of the Army Act.

In no case should the sentence be varied or suspended unless the man's conduct whilst under sentence has been satisfactory.

12. *Miscellaneous.*—(a) Whenever a soldier under sentence of penal servitude, imprisonment or detention which is in execution is discharged from the army whilst remaining under sentence, officers i/c records are *invariably at once* to notify the War Office by letter accompanied by A.F. A 3104 either in original or prepared under para. 11 in order that any necessary review of sentence may be effected.

(b) Whenever a soldier under sentence of penal servitude, imprisonment or detention, which is in execution, is sent from overseas to the United Kingdom to undergo his sentence the G.O.C. of the station from which he embarks for the United Kingdom is *invariably at once* to notify the War Office in order that steps may be taken to ensure that any necessary review of sentence is effected under para. 11 or 12 (a).

In both cases (a) and (b) above the notification referred to will contain the date of the soldier's last trial.

(c) Sentences of men discharged from the Army, which are being served in the United Kingdom, the Channel Islands or the Isle of Man, will not be remitted by superior military authorities or by other reviewing authorities, under section 57 of the Army Act, without reference to the War Office.

**PART III.—AUTHORITY RESPONSIBLE FOR HOLDING A.F. A 3104 AND BRINGING EACH CASE FORWARD FOR REVIEW EVERY THREE MONTHS OR SIX MONTHS, AS THE CASE MAY BE.**

**13. United Kingdom.**—(a) Authority for holding A.F. A 3104 and for bringing each case forward for review as required is the officer i/c records of the corps concerned.

(b) He will in the case of men serving under a suspended sentence forward A.F. A 3104 as directed in para. 4 (a).

In the case of a man whose sentence is in execution he will forward A.F. A 3104 direct to the competent (or superior) military authority under whose command the man's unit is serving as directed in para. 11 (a).

In the case of men who are in a state of desertion when their sentences become due for review, officers i/c records will make a note of such fact in that part of the form headed "action on review" and will not forward the form for review until the man is apprehended or surrenders himself, in which case he will forward A.F. A 3104 as directed in para. 4 (a) pointing out that the review has been delayed by the soldier's absence.

(c) Where a suspended sentence is remitted or a soldier has served his sentence A.F. A 3104 will be put away in the original attestation.

**14. Stations overseas (other than India).**—The authority both for holding A.F. A 3104 and for bringing each case forward for review every 3 months or 6 months will be the general or other officer commanding the troops.

When a suspended sentence is remitted or a soldier has served his sentence A.F. A 3104 will be despatched to the officer i/c records at home for retention with the man's documents.

**15. India.**—Subject to such regulations as may from time to time be issued by the C.-in-C. the authority both for holding A.F. A 3104 and for bringing each case forward for review every 3 months or 6 months will be the O.C. unit.

When a suspended sentence is remitted or a soldier has served his sentence A.F. A 3104 will be despatched to the officer i/c records at home for retention with the man's documents.

**16. An expeditionary force.**—Subject to such instructions as the G.O.C.-in-C. may issue, the authority both for holding A.F. A

3104 and for bringing each case forward for review every 3 months or 6 months will be the officer i/c the Adjutant-General's office at the base, who will, if possible, institute a card index of all men under sentence of penal servitude, or imprisonment or detention of over 6 months, and of all men under suspended sentence of whatever length. He will act as directed in para. 13 (b).

When a suspended sentence is remitted or the soldier has served his sentence A.F. A 3104 will be despatched to the officer i/c records at home for retention with the man's documents.

17. *Small punitive force or minor expedition.*—No definite rules can be laid down as to the authority both for holding A.F. A 3104 and for bringing each case forward for review every 3 months or 6 months as the case may be.

But the commander will be responsible through the Adjutant-General's branch of the staff for initiating a system which will ensure proper review both of sentences in suspension, and in execution on the principles laid down in Parts I and II. Particular care must be taken by the commander of the force to ensure that A.F. A 3104 is evacuated at the same time (or as soon after as possible) and to the same destination as the man concerned.

18. *Duplicate A.F. A 3104.* In order to avoid trouble in the case of a lost A.F. A 3104, the authority directed to hold this form will always prepare a duplicate of any form which he is responsible for holding.

If an original form which is despatched from his office does not return in due course he will institute inquiries, and if it is found to be lost the duplicate will be taken into use and a fresh duplicate prepared.

The duplicate taken into use will be headed "Duplicate, original lost" and bear the office stamp of the authority preparing it. The duplicate will be disposed of as indicated in para. 7 but will be despatched under separate cover.

19. A copy of A.F. A 3104 is printed as an Appendix to these Instructions.

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## APPENDIX.

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N.B.—*Examples of entries dealing with an imaginary sentence of one year's detention have been made in para. VI.*

Army Form  
A 3104.

### REVIEW OF SENTENCES AWARDED BY COURT-MARTIAL.

I.—Case of No.....Unit.....  
Sentenced to.....on.....  
Age on, and date of enlistment.....  
Term of service.....

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FIRST  
TRIAL.

For details  
of offences, see  
paragraph VII.

For C.O.'s  
remarks, see  
paragraph IX.

SECOND  
TRIAL.

For details  
of offence,  
see para-  
graph VIII.  
For C.O.'s  
remarks,  
see para-  
graph XII.

II.—To .....

Superior Military Authority.

I have directed that the above-named be  
not committed to undergo his sentence, which I  
recommend should be (suspended) (put into  
execution) <sup>(1)</sup> for reasons given in paragraph X.

Place .....

Date ..... Confirming Authority.

III.—I direct that the sentence (which I  
hereby commute to.....) (of which I  
remit.....) <sup>(1)</sup> <sup>(2)</sup> (be suspended) (be  
put into execution) <sup>(1)</sup> and be reviewed on  
.....<sup>(3)</sup>.

Place .....

Date .....

Superior Military Authority <sup>(4)</sup>.

(For action on review, see paragraph VI.)

IV.—<sup>(5)</sup> To .....

Superior Military Authority.

This man was again convicted on.....

.....and sentenced to .....,  
and I have directed that he shall not be com-  
mitted to undergo his sentence, which I recom-  
mend should be (suspended) (put into execution)  
<sup>(1)</sup> and run (concurrently) (consecutively) <sup>(1)</sup>  
with the previous <sup>(2)</sup> sentence for the reasons  
given in paragraph XIII.

Place .....

Date ..... Confirming Authority.

V.—<sup>(5)</sup> I direct that the sentence (which  
I hereby commute to.....)  
(of which I remit.....) <sup>(1)</sup> <sup>(2)</sup>  
(be suspended) (be put into execution) and that  
it run (concurrently) (consecutively) <sup>(1)</sup> with  
the previous <sup>(2)</sup> sentence of.....  
and be reviewed on .....<sup>(3)</sup>

Place .....

Date .....

Superior Military Authority <sup>(4)</sup>.

(1) Erase words not required, and initial erasures.

(2) A sentence of penal servitude or imprisonment, combined with discharge with ignominy, cannot be suspended unless the discharge with ignominy is remitted.

(3) A suspended sentence *must* be reviewed *at least* once every three months, and a sentence put into execution should be reviewed in not more than six months.

(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.

(5) This paragraph to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.

(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

## VI.—ACTION ON REVIEW.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under section 57 of the Army Act* may under that section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

Date.	Directions.	Signature and appointment of authority giving the directions.	If sentence suspended, actual date of release and marks earned to count towards remission and signature of O.C. Prison or Detention Barracks.
21/8/20 ..	Suspended; bring forward 20/9/20.	A. BROWN, <i>Maj.-Gen.</i> , Comdg. 6th Div., Superior Military Authority.	
21/9/20 ..	Put into execution; bring forward 21/3/21.	A. BROWN, <i>Maj.-Gen.</i> , Comdg. 6th Div., Superior Military Authority.	
21/3/21 ..	Suspended; bring forward 21/6/21.	A BROWN, <i>Maj.-Gen.</i> , Comdg. 6th Div., Superior Military Authority.	Released 22/3/21 Marks 1240. J. SMITH, <i>Major</i> , Comdt., Aldershot Detention Bks.
21/6/21 ..	Bring forward 21/9/21.	R. LITTLE, <i>Col. Comdt.</i> , Comdg. 16th Inf. Bde. Competent Military Authority.	
21/9/21 ..	Remitted.	R. LITTLE, <i>Col. Comdt.</i> , Comdg. 16th Inf. Bde., Competent Military Authority.	

All recommendations, &c., considered upon review, should be pasted here.

Charge or Charges giving particulars.	Date of Offence.	Date of Trial.
<b>VII.—First Trial.</b>  ..... Signature of officer making entry.		
<b>VIII.—Second Trial.</b>  ..... Signature of officer making entry.		

If further space required, an additional slip should be pasted here.

**IX. C.O's Remarks and Recommendations on First Trial.**

Date.		Signature.

**X. Confirming Officer's Remarks and Recommendations on First Trial.**

Date.		Signature.

## XI.

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Space for further Review.

Date.	Directions.	Signature and Appointment of Authority giving the directions.	If sentence suspended, date of release, No. of marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks.

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## XII. Remarks and Recommendations of C.O. on Second Trial.

Date.		Signature.

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## XIII. Remarks and Recommendations of Confirming Officer on Second Trial.

Date		Signature.

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## Disciplinary Regulations and Orders.<sup>1</sup>

### RELATIONS BETWEEN MILITARY AND NAVAL FORCES ACTING TOGETHER.

#### NAVAL DISCIPLINE ACT, SECTION 90A.

90A.—(1) Where an officer or non-commissioned officer, not below the rank of serjeant, is a member of a body of His Majesty's military forces acting with, or is attached to, any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's naval forces as aforesaid, be treated, and may exercise all such powers (other than powers of punishment), as if he were a naval officer or petty officer, as the case may be.

(1A) . . . . (Air Force).

(2) Where any naval officer or seaman is a member of a body of His Majesty's naval forces acting with or is attached to any body of His Majesty's military forces under such conditions as may be prescribed by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers, not below the rank of serjeant, of such military body shall, in relation to him, be treated, and may exercise all such powers (other than powers of punishment), as if they were naval officers and petty officers.

(2A) . . . . (Air Force.)

(3) The relative rank of naval and military and air-force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force.

#### CONDITIONS PRESCRIBED BY THE ADMIRALTY AND ARMY COUNCIL UNDER THE POWERS GRANTED TO THEM BY SECTION 90A OF THE NAVAL DISCIPLINE ACT AND SECTION 184A OF THE ARMY ACT.

WHEREAS Section 90A of the Naval Discipline Act and Section 184A of the Army Act apply only when such conditions as may be prescribed by regulations made by the Admiralty and Army Council are complied with.

Army Order  
160 of 1918.

Now therefore it is hereby declared that the said sections shall apply if any of the following conditions are complied with :—

1. If an Order applying the sections is made by the Admiralty and Army Council.

2. If in case of emergency where two forces are acting together and reference to the Admiralty and Army Council would cause undue delay, an order in writing applying the sections is made by the officers commanding the two forces

<sup>1</sup> These regulations and orders are made pursuant to ss. 179A and 184A of the Army Act. See the notes to those sections.

respectively, but in such case such officers shall communicate the fact to the Admiralty and Army Council.

3. In the case of any officer or man of one service being attached to a force of the other service, if the officer under whose command such officer or man is, with the consent of the officer in command of the force to which he is attached, makes an order that the said sections shall apply.

(Sd.) FISHER,

(Sd.) F. T. HAMILTON,

*Two of the Lords Commissioners for  
executing the office of Lord High Admiral.*

Dated this 3rd day of April, 1915.

(Sd.) W. GRAHAM GREENE,

*Secretary.*

Signed on behalf of the Army Council this 31st day of March, 1915.

(Sd.) J. WOLFE MURRAY,

*Chief of the Imperial General Staff.*

(Sd.) HENRY C. SCLATER,

*Adjutant-General.*

(Sd.) R. H. BRADE,

*Secretary.*

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#### ATTACHMENT OF OFFICERS AND SOLDIERS TO THE AIR FORCE AND OF OFFICERS AND AIRMEN TO THE REGULAR FORCES.

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##### AIR FORCE ACT, SECTION 179A.

(1) The Air Council may direct from time to time that any officers or airmen of the regular air force shall, under such conditions as may be prescribed by regulations made by the Air Council and the Army Council, be temporarily attached to a military force.

\* \* \* \* \*

#### CONDITIONS PRESCRIBED BY THE ARMY COUNCIL AND THE AIR COUNCIL UNDER THE POWERS GRANTED TO THEM BY SECTION 179A SUBSECTION (1) OF THE ARMY ACT AND SECTION 179A SUBSECTION (1) OF THE AIR FORCE ACT.

Army Order  
227 of 1913.

WHEREAS by Sections 179A of the Army Act and 179A of the Air Force Act it is provided that under such conditions as may be prescribed by regulations made by the Army Council and the Air Council :—

- (a) Officers and soldiers of the Regular Forces may be temporarily attached to the Air Force by directions given from time to time by the Army Council, and
- (b) Officers and airmen of the Regular Air Force may be temporarily attached to the Regular Forces by directions given from time to time by the Air Council.

Now therefore it is hereby declared that the following shall be the conditions upon which officers and soldiers of the Regular Forces may be temporarily attached to the Air Force :—

- (a) If the Air Council concur in the directions for such attachment given from time to time by the Army Council, or

if such directions are given by the Army Council in pursuance of and in accordance with any order or instruction issued by the Army Council with the approval of the Air Council.

And it is hereby further declared that the following shall be the conditions upon which officers and airmen of the Regular Air Force may be temporarily attached to the Regular Forces :—

- (b) If the Army Council concur in the directions for such attachment given from time to time by the Air Council ; or if such directions are given by the Air Council in pursuance of and in accordance with any order or instruction issued by the Air Council with the approval of the Army Council.

Signed on behalf of the Army Council,

IAN MACPHERSON,  
C. F. N. MACREADY, A.G.  
C. H. HARRINGTON, D.C.I.G.S.

Dated this 12th day of June, 1918.

Signed on behalf of the Air Council,

JOHN BAIRD,  
F. H. SYKES, C.A.S.  
GODFREY PAINE, M.G.P.

Dated this 12th day of June, 1918.

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*Directions given by the Air Council with the concurrence of the Army Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council.*

The following officers and airmen of the Regular Air Force shall be temporarily attached to the Regular Forces, namely :— Army Order 227 of 1918.

- (1) Every officer and airman of the Regular Air Force who is for the time being or from time to time serving in any military Command Depot in the United Kingdom ; and
- (2) Every officer and airman of the Regular Air Force who is for the time being or from time to time serving in any military hospital in the United Kingdom from the time of admission until discharged.

An officer or airman of the Regular Air Force attached to the Regular Forces under 1 or 2 above written, shall continue attached as aforesaid only whilst serving as aforesaid.

- (3) Any officer or airman of the Regular Air Force, who in the case of any emergency is ordered to be attached to the Regular Forces by the Officer Commanding any portion of the Air Force serving overseas, with the assent of the General Officer Commanding that portion of the Regular Forces which is serving in the same place overseas ; but in such case the officer issuing the order and the General Officer who assents thereto shall communicate the fact to the Air Council and Army Council respectively. An officer or airman attached to the Regular Forces in pursuance of this clause shall continue to be so attached for so long as may be prescribed by the order by which he was attached, or until such time as an order revoking such

attachment is made by the General Officer Commanding the military forces overseas with which he is for the time being serving with the assent of the Officer Commanding any body of the Air Force serving in the same place overseas, or until such time as an order revoking such attachment is made by the Army Council with the assent of the Air Council.

- (4) Any officer of the Regular Air Force during such time as he may, for the purpose of instruction, be in attendance at a court-martial convened under the Army Act.

*Further direction given by the Air Council with the concurrence of the Army Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council.*

Army Order  
273 of 1918.

Every airman of the Regular Air Force who may for the time being be on board any vessel employed as a military transport or troopship shall be temporarily attached to the Regular Forces while on board, and during such time only as there may not be on board the same vessel an officer of the Regular Air Force or a naval or military officer attached to the Regular Air Force (other than an officer holding only an honorary commission).

*Further direction given by the Air Council with the concurrence of the Army Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council.*

Army Order  
110 of 1921

The following officers and airmen of the regular Air Force shall be temporarily attached to the Regular Forces, namely:—

Any officer or airman of the regular Air Force who is instructed to serve with a unit of the Regular Forces and is taken on the strength of such unit while serving with and on the strength of any unit of the Regular Forces.

*Direction given by the Army Council with the concurrence of the Air Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council.*

Army Order  
283 of 1922.

The following officers and soldiers of the regular forces shall be temporarily attached to the regular Air Force, namely:—

- (a) Any officer or soldier of the regular forces who in the case of any emergency is ordered to be attached to the regular Air Force by the officer commanding any portion of the regular forces serving overseas, with the assent of the air officer commanding that portion of the air force which is serving in the same place overseas; but in such case the officer issuing the order and the air officer who assents thereto shall communicate the fact to the Army Council and Air Council respectively. An officer or soldier attached to the regular Air Force, in pursuance of this clause shall continue to be so attached for so long as may be prescribed by the order by which he was attached, or until such time as an order revoking such attachment is made by the air officer commanding the Air Force overseas with which he is for the time being serving with the assent of the officer commanding any body of the regular forces serving in the same place overseas, or until such time as an order revoking such attachment is made by the Air Council with the assent of the Army Council.

- (b) Any officer or soldier of the regular forces who is instructed to serve with a unit of the regular Air Force and is taken on the strength of such unit while serving with and on the strength of any unit of the regular Air Force.

*Further directions given by the Army Council with the concurrence of the Air Council pursuant to the Regulations dated 12th June, 1918, made by the Army Council and Air Council.*

(1) Every officer of the regular forces who is ordered in writing to do duty for a period in an air force transport or freightship (men) shall be temporarily attached to the regular air force during the period specified in such order. Army Order  
336 of 1925.

(2) A similar direction, relating to the temporary attachment of officers of the regular air force to the regular forces, has been given by the Air Council.

(3) Every soldier of the regular forces who may for the time being be on board any vessel employed as an air force transport or freightship (men) shall, during such time as there may not be on board the same vessel an officer of the regular forces or an officer of the regular air force attached to the regular forces, be temporarily attached to the regular air force while on board.

*Army Council's instruction on the Direction given at (1) above.*

The order in writing (signed by or on behalf of the general officer commanding or officer commanding troops at the port of embarkation) should specify that the officer (named) is ordered to do duty in the (named) air force transport or freightship (men) during the period of the voyage between ports (named); and the order will be delivered to the senior air force officer on board.

## RELATIONS BETWEEN MILITARY AND AIR FORCES ACTING TOGETHER.

### AIR FORCE ACT, SECTION 184A.

(1) . . . . . (Navy).

(1A) Where an officer or non-commissioned officer of the Army is a member of a body of His Majesty's military forces acting with any body of His Majesty's air force under such conditions as may be prescribed by regulations made by the Army Council and Air Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's air force as aforesaid, be treated and have all such powers (other than powers of punishment) as if he were an air-force officer or non-commissioned officer as the case may be:

Provided that under regulations made by the Air Council and Army Council, the officers and soldiers of a body of His Majesty's military forces acting with any body of the air force on active service, or any of such officers or soldiers, may, in such manner and in such circumstances and subject to such conditions as may be provided by or under those regulations, be made subject to this Act, and in such case they shall be subject thereto in like manner as if they were officers and soldiers attached to the air force.

(2) Where any officer or airman is a member of a body of His Majesty's air force acting with any body of His Majesty's naval

or military forces under such conditions as may be prescribed by regulations made by the Air Council, and, as the case may be, the Admiralty or the Army Council, and such officer or airman is not borne on the books of any of His Majesty's ships in commission, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and petty officers of such naval body or the officers and non-commissioned officers of such military body (as the case may be) shall, in relation to him, be treated and have all such powers (other than powers of punishment) as if they were air-force officers or non-commissioned officers.

(3) The relative rank of naval and military and air-force officers, petty officers, and non-commissioned officers shall, for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force.

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CONDITIONS PRESCRIBED BY THE ARMY COUNCIL AND THE AIR COUNCIL UNDER THE POWERS GRANTED TO THEM BY SECTION 184A OF THE ARMY ACT AND SECTION 184A OF THE AIR FORCE ACT.

Army Order  
100 of 1918.

Whereas Section 184A of the Army Act and Section 184A of the Air Force Act apply only when such conditions as may be prescribed by regulations made by the Army Council and Air Council are complied with.

Now therefore it is hereby declared that the said sections shall apply if any of the following conditions are complied with :—

1. If an Order applying the sections is made by the Army Council and Air Council.

2. If in the case of emergency where two Forces are acting together and reference to the Army Council and Air Council would cause undue delay, an order in writing applying the sections is made by the Officers Commanding the two Forces respectively, but in such case such officers shall communicate the fact to the Army Council and Air Council.

It is also hereby declared that :—

3. Whenever any body of the Military Police is acting in any place where there shall be present any body of His Majesty's Air Force, then for the purposes of command and discipline and for the purposes of the provisions of the Air Force Act relating to superior officers, the officers, warrant officers and non-commissioned officers who are members of such body of the Military Police shall, in relation to such body of His Majesty's Air Force as aforesaid, be treated and have all such powers (other than powers of punishment) as if they were Air Force officers, warrant officers or non-commissioned officers, as the case may be.

4. Whenever any body of the Air Force Police is acting in any place where there shall be present any body of His Majesty's Military Forces, then for the purposes of command and discipline and for the purposes of the provisions of the Army Act relating to superior officers; the officers, warrant officers and non-commissioned officers who are members of such body of the Air Force Police shall in relation to such body of His Majesty's Military

Forces as aforesaid be treated and have all such powers (other than powers of punishment) as if they were military officers, warrant officers or non-commissioned officers, as the case may be.

Signed on behalf of the Army Council this 22nd day of March, 1918.

(Sd.) DERBY.

(Sd.) C. F. N. MACREADY, *Adjutant-General*.

(Sd.) R. D. WHIGHAM, *Major-General, Deputy Chief of the Imperial General Staff*.

Signed on behalf of the Air Council this 22nd day of March, 1918.

(Sd.) ROTHERMERE.

(Sd.) H. TRENCHARD, *Major-General, Chief of the Air Staff*.

(Sd.) GODFREY PAINE, *Master-General of Personnel*.

*Order made on the 7th November, 1919, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Whenever any body of the Military Forces which is or forms part of or is attached to an Expeditionary Force and any body of the Air Force are acting together beyond the seas Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof. Army Order 414 of 1919.

*Order made on the 10th November, 1919, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

The proviso to Section 184A (1A) of the Army Act shall apply to and in relation to the officers and airmen of any body of the Royal Air Force acting with any body of His Majesty's Military Forces under or within the Command of the General Officer Commanding-in-Chief the British Army of the Rhine whilst on active service, and such officers and airmen of the Royal Air Force as aforesaid shall in all respects be subject to the Army Act in like manner as if they were officers and airmen attached to the Army so long as they remain under or within the Command of the General Officer Commanding-in-Chief, the British Army of the Rhine Army Order 408 of 1919.

*Order made on the 31st October, 1921, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Whenever any body of His Majesty's Military Forces and any body of His Majesty's Air Force are acting together within the area of Aden, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof. Army Order 488 of 1921.

*Order made on the 19th July, 1922, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Army Order  
263 of 1922. Whenever any body of His Majesty's Military Forces and any body of the Royal Air Force are acting together within the area of Palestine or Transjordan, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies, and the officers, warrant officers, non-commissioned officers and men, who are members thereof.

*Order made on the 13th March, 1923, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Army Order  
144 of 1923. Whenever any body of His Majesty's Military Forces and any body of the Royal Air Force are acting together under or within the command of the Air Officer Commanding, Iraq Command, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies, and the officers, warrant officers, non-commissioned officers and men, who are members thereof.

*Order made on the 14th March, 1923, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Army Order  
144 of 1923. Whenever any body of His Majesty's Military Forces and any body of the Royal Air Force are being conveyed together on board any vessel employed as a transport or troopship, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof.

*Order made on the 17th September, 1923, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Army Order  
376 of 1923. Whenever any body of His Majesty's Military Forces and any body of His Majesty's Air Force are acting together within the area of Egypt, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof.

*Order made on the 27th April, 1927, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Army Order  
218 of 1927. 1. Whenever any Air Force prisoners or airmen undergoing detention are committed to any prison or detention barrack the governor, commandant, officers or staff of which are officers, warrant officers or non-commissioned officers of a body of His Majesty's Military Forces, then for the purposes of command and discipline and for the purposes of the provisions of the Air Force Act relating to superior officers, such officers, warrant



officers or non-commissioned officers of His Majesty's Military Forces shall in relation to such Air Force prisoners or airmen undergoing detention as aforesaid during the period that they are so committed as aforesaid be treated and have all such powers (other than powers of punishment) as if they were Air Force officers, warrant officers or non-commissioned officers, provided that nothing herein contained shall derogate from any powers of punishment which such officers, warrant officers or non-commissioned officers may have under or by virtue of any rules made pursuant to Section 132 of the Air Force Act or Section 132 of the Army Act.

2. Whenever any military prisoners or soldiers undergoing detention are committed to any prison or detention barrack, the governor, commandant, officers or staff of which are officers, warrant officers or non-commissioned officers of a body of His Majesty's Air Force, then, for the purposes of command and discipline and for the purposes of the provisions of the Army Act relating to superior officers, such officers, warrant officers or non-commissioned officers of His Majesty's Air Force shall, in relation to such military prisoners or soldiers undergoing detention as aforesaid, be treated, and have all such powers (other than powers of punishment) as if they were military officers, warrant officers or non-commissioned officers, provided that nothing herein contained shall derogate from any powers of punishment which such officers, warrant officers or non-commissioned officers may have under or by virtue of any rules made pursuant to Section 132 of the Army Act or Section 132 of the Air Force Act.

*Order made on the 19th December, 1927, by the Army Council and Air Council under Clause 1 of the Conditions set out above.*

Whenever any body of His Majesty's Military Forces and any body of His Majesty's Air Force are acting together within the area of the Sudan, Section 184A of the Army Act, except the proviso to Subsection (1A) of that Section, and Section 184A of the Air Force Act, except the proviso to Subsection (1A) of that Section, shall apply to and in relation to such bodies and the officers, warrant officers, non-commissioned officers and men who are members thereof.

Army Order  
5 of 1928.

Order in  
Council.

**Order in Council respecting Discipline on board H.M.'s Ships as amended by Order in Council dated 30th June, 1890.**

At the Court at Osborne House, Isle of Wight, the 6th day of February, 1882.

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 3rd of February, 1882, in the words following, viz. :—

“ WHEREAS by the 88th section of an Act passed in the 29th and 30th years of Your Majesty's reign, chapter 109, entitled An Act to make Provision for the Discipline of the Navy, it is enacted that Your Majesty's land forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct ;

“ And whereas under Articles 1172, 1173, and 1174 of the Regulations for the Government of Your Majesty's Naval Service, established under Your Majesty's Order in Council dated the 4th day of February, 1879, certain rules were laid down for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships ;

“ And whereas we, having had the said rules under our careful consideration, are humbly of opinion that it would be for the advantage of Your Majesty's Service that the said rules should be amended, we therefore beg leave to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the said rules shall be cancelled, and that the following Regulations shall be established in lieu thereof :—

“ 1. Whenever any of Your Majesty's land forces shall be embarked as passengers in any of Your Majesty's ships, the officers and soldiers shall, from the time of embarkation, strictly observe the laws and regulations established for the government and discipline of Your Majesty's Navy, and shall, for these purposes, be under the command of the commanding officer of the ship, as well as of the senior naval officer present ; and all military officers or other persons under the equivalent rank of Captain of Your Majesty's Navy taking passages, and all military officers in actual command for the time being of any of the troops embarked, through whom orders to the troops (given by the officer of the watch) are required to pass, shall be under the command of the officer of the watch.

“ 2. Any act against the good order and discipline of the ship shall be deemed an act to the prejudice of good order and military discipline under the 40th section of the Army Act, 1881, unless the breach of discipline constitutes some other military offence for which provision is otherwise made in the said Act.

"3. Whenever an officer or soldier commits any act against the good order and discipline of the ship, the commanding officer of the ship may, by his own authority, and without reference to any other person, cause him to be put under arrest or confined as a close prisoner; and may, if he thinks the case requires it, order the prisoner to be disembarked at the first convenient opportunity, transmitting a report in writing, through the senior naval officer present, to the senior military officer in command of the land forces, in order that the offender may be brought before a military court-martial.

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Council.

"4. The commanding officer of the ship shall have full power, on his own authority to order an offender, whether officer or soldier, to be placed in either naval or military custody, as he shall consider most desirable, observing that in all cases where an offender is to be disembarked for trial by military authority, he must be placed in military custody on board the ship.

"5. If any officer or soldier commits any act which, in the opinion of the commanding officer of the troops, can only be adequately dealt with by a general or district court-martial, the offender shall, with the concurrence of the commanding officer of the ship, be disembarked on the first opportunity for the purpose of being proceeded against according to military law.

"6. If any private soldier shall commit any act against the good order and discipline of the ship, which in the opinion of the commanding officer of the ship requires the infliction of any summary punishment for which a warrant is required by the Summary Punishment Table attached hereto, and which he is hereby authorised to award, the commanding officer of the ship shall confer with the commanding officer of the troops as to the nature and amount of such punishment, if any, to be inflicted, and on their concurrence the commanding officer of the ship shall, by warrant under his hand, which should also bear the signature of the officer commanding the troops as concurring, sentence the offender to suffer such punishment accordingly. In the event of the commanding officer of the troops not concurring with the commanding officer of the ship, the commanding officer of the ship is to cause the offender to be placed under arrest or confined as a close prisoner, until the case can be referred to superior military authority."

7. *Cancelled by Order in Council dated 4th May, 1923. (See p. 822.)*

"8. The commanding officer of the troops, on his taking command of the troops embarked, will receive from the captain of the ship authority under his hand, and in the established form, to award such summary punishments as are specified in the Summary Punishment Table for the military, but such authority will not deprive the captain of his right to withdraw the original authority given; in the latter case, however, he should report to the Admiralty the circumstances which induced him to deviate from the general rule.

"9. All orders to the troops are, so far as may be practicable, to be given through their own officers and non-commissioned officers, and the commanding officer of the ship is to bear in mind that

Order in  
Council.  
—

although the discipline of all on board is under his entire control, he is nevertheless to leave the troops to the management of their own officers, so far as may be consistent with the order and discipline of the ship.

" 10. In special and exceptional cases, where the commanding officer of the ship may deem it necessary for the good order or discipline of the ship to give such orders as may interfere with existing regulations, or may affect the internal economy and discipline of the troops embarked, he is to make a special report of the circumstances to the Admiralty.

" 11. When any soldiers of Your Majesty's land forces are embarked as passengers in any of Your Majesty's ships, and there is no commissioned officer of the land forces on board, the commanding officer of the ship shall possess and may exercise in regard to any such soldiers all the powers conferred upon him by Article 6 in the case of private soldiers without conferring with or obtaining the concurrence or signature of any officer of Your Majesty's land forces.

" 12. All summary punishments for soldiers embarked on board Your Majesty's ships shall be in strict accordance with the Summary Punishment Table appended to this Order in Council. <sup>1</sup>

" 13. Military convicts and military prisoners when embarked on board Your Majesty's ships for passage shall be kept in military custody.

" Your Majesty's Secretary of State for War and his Royal Highness the Field Marshal Commanding-in-Chief have signified to us their concurrence in these proposals."

#### SUMMARY PUNISHMENT TABLE. <sup>1</sup>

\* \* \* \*

HER MAJESTY, having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C. L. PEEL.

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1. This table, as amended, is set out in the Schedule to the Order of 1923 below.

**Order in Council amending the above Order.**Order in  
Council.

At the Court at Buckingham Palace, the 13th day of February,  
1912.

PRESENT :

**THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.**

**WHEREAS** there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 8th day of February, 1912, in the words following, viz. :-

"**WHEREAS** by Section 88 of the Naval Discipline Act it is enacted that Your Majesty's land forces when embarked on any of Your Majesty's Ships shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct :

"And whereas by Orders in Council bearing date the 6th day of February, 1882, and the 30th day of June, 1890, certain regulations were established for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's Ships together with tables of summary punishments for private soldiers and of punishments for non-commissioned officers who may commit any act against the good order and discipline of the ship in which they are embarked :

"And whereas the punishment of detention may now be inflicted in Your Majesty's Navy :

"We beg leave humbly to recommend that Your Majesty may be graciously pleased by Your Order in Council to sanction the inclusion of this punishment in the aforesaid table of summary punishments for private soldiers embarked in Your Majesty's Ships as shown in the annexed schedule.

"The Army Council have signified their concurrence in this proposal."

**SUMMARY PUNISHMENT TABLE. <sup>1</sup>**

\* \* \* \* \*

**HIS MAJESTY**, having taken the said Memorial into consideration, was pleased, by and with the advice of His Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

**ALMERIC FITZROY.**


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<sup>1</sup>, This table, as amended, is set out in the Schedule to the Order of 1923 below.

Order in  
Council.

# **Further Order in Council amending the above Orders.**

At the Court at Buckingham Palace, the 4th day of May, 1923.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 14th day of April, 1923 (N.L. 1852/23), in the words following, viz. :—

“Whereas by Section 88 of the Naval Discipline Act it is enacted that Your Majesty's Land and Air Forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct :

“And whereas by Orders in Council bearing date the 6th day of February, 1882, and the 30th day of June, 1890, and the 13th day of February, 1912, certain regulations were established for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships together with tables of summary punishments for private soldiers and of punishments for non-commissioned officers who may commit any act against the good order and discipline of the ship in which they are embarked :

“And whereas regimental courts-martial are no longer assembled for the trial of non-commissioned officers and private soldiers of Your Majesty's land forces :

“We beg leave humbly to recommend that Your Majesty may be graciously pleased, by Your Order in Council, to direct that Clause 7 of the regulations established by Your Majesty's Order in Council aforesaid, bearing date the 6th day of February, 1882, shall cease to have effect, and that the summary punishment table appended to Your Majesty's Order in Council aforesaid bearing date the 13th day of February, 1912, shall be cancelled, and that the table of summary punishments annexed hereto shall be substituted for it.

“The Army Council have signified to us their concurrence in this proposal.”

**"DESCRIPTION OF SUMMARY PUNISHMENTS TO BE AWARDED TO PRIVATE SOLDIERS WHEN ENBARKED IN HIS MAJESTY'S SHIPS."**

No. of troop punishments.	Authorised summary punishments for private soldiers.	By whom to be awarded.	If warrant required.	Military equivalent.	marks.
1	Imprisonment with or without hard labour (not to exceed 42 days).	Captain	Yes	Imprisonment with or without hard labour, day for day	The offender loses a badge for any imprisonment or detention.
1A	Detention (not to exceed 42 days)	Ditto	Yes	Detention, day for day	Loss of a badge.
2	Confinement in a cell (not to exceed 14 days)	Ditto	Yes	Conviction by Court-Martial	Loss of a badge if a regimental entry.
3	Stoppages in conformity with Army Act, s. 138 (3), and Army Act, s. 138 (4), in cases referred by Officer Commanding the Troops.	Ditto	Yes		
3A	Stoppages in conformity with Army Act, s. 138 (4).	Officer Commanding the Troops.	No	Regimental entry if a summary punishment equivalent to more than 7 days confinement to barracks is awarded in addition to stoppages, otherwise a company entry.	
4	Stoppages of smoking. Eating meals under sentry's charge. Half-an-hour to dinner. Not exceeding 3 hours' pack drill if weather permits; if not, to parade without packs. To stand for 2 hours on deck from 6 to 8 p.m. Answer roll call every bell between morning parade and 6 p.m.	Ditto	No	Confinement to barracks, day for day.	If confined for more than 7 days he loses a badge.
5	Stoppage of smoking. Answer roll call every bell from morning parade till 6 p.m.	Ditto	No	Company entry.	
6	Stoppage of smoking not to exceed 28 days. Answer roll call four times daily.	Ditto	No	Regimental entry if exceeding 7 days; otherwise company entry.	If exceeding 7 days entails loss of badge.
7	Fines for drunkenness, as provided for in King's Regulations and Orders for the Army.	Ditto	No	Regimental entry.	
8	Extra guards for slackness, inattention on guard, as in King's Regulations for the Army.	Ditto	No	Company entry.	

NOTE.—A private soldier may be admonished and a non-commissioned officer admonished, reprimanded, or severely reprimanded by the Officer Commanding the Troops."

Order in  
Council.  
—

His Majesty, having taken the said memorial into consideration, was pleased, by and with the advice of His Privy Council, to approve of what is therein proposed.

And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

ALMERIC FITZROY.

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## PART III.

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### MISCELLANEOUS ENACTMENTS AND REGULATIONS.

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Part III contains the whole or parts of:—

- The Railway Regulation Act, 1842.
- " " " 1844.
- The Regulation of the Forces Act, 1871.
- The Cheap Trains Act, 1883.
- The National Defence Act, 1888.
- The Railways Act, 1921.
- The Reserve Forces Act, 1882.
- " " " 1890.
- The Reserve Forces and Militia Act, 1898.
- The Reserve Forces Act, 1899.
- " " " 1900.
- " " " 1906.
- The Territorial and Reserve Forces Act, 1907.
- The Territorial Army and Militia Act, 1921.
- The Auxiliary Air Force and Air Force Reserve Act, 1924.
- The Officers' Commissions Act, 1862.
- The Local Government Act, 1888.
- The Regimental Debts Act, 1893.
- The Regimental Debts (Deposit of Wills) (Scotland) Act, 1919.
- Regulations under the Act of 1893.
- Royal Warrant, Soldiers' Effects Fund.
- The Friendly Societies Act, 1896.
- The Official Secrets Act, 1911.
- The Official Secrets Act, 1920.
- The Emergency Powers Act, 1920.

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[NOTE:—Where any of these enactments have been amended by subsequent enactments they are printed as so amended, except where otherwise stated.]

#### The Railway Regulation Act, 1842.

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[5 & 6 VICT., c. 55.]

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Extract from

*An Act for the better Regulation of Railways, and for the Conveyance of Troops.* [30th July, 1842.]

20. Whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, . . . . or the police force, by any railway, the directors

Railway companies shall convey military and police forces at prices to be settled.

thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessities and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities.<sup>1</sup>

### The Railway Regulation Act, 1844.

[7 & 8 VICT., c. 85.]

#### Extract from

*An act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways.* [9th August, 1844.]

Certain  
companies  
to convey  
military  
and police  
forces at  
certain  
charges,  
5 & 6  
Vict. c. 85.

12. And whereas by the Railway Regulation Act, 1842, it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, . . . or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessities and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: And whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from Parliament; Be it enacted, that all railway companies which have been or shall be incorporated by any Act of the present or any future session, or which by any Act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous Acts or any of them, or have been or shall be authorised to do any act unauthorised by the provisions of such previous Acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the . . . police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by Act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken

1. This section was superseded in Gt. Britain by the Cheap Trains Act (see p. 828), but still applies to Northern Ireland. The section has been applied to the Territorial Army by T.R.F. Act, 1907, and Order in Council dated 19th March, 1908.

free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the . . . . police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundredweight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundredweight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessities and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the Company), shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.<sup>1</sup>

### The Regulation of the Forces Act, 1871.

[34 & 35 VICT., c. 86.]

#### Extract from

*An act for the better Regulation of the Regular and Auxiliary Land Forces of the Crown; and for other purposes relating thereto.*

[17th August, 1871.]

#### PART IV.—MISCELLANEOUS AND DEFINITIONS.

16. When Her Majesty, by Order in Council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State may, by warrant under his hand, empower any person or persons named in such warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the Secretary of State may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the Secretary of State as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Power of Government on occasion of emergency to take possession of railroads.

Any warrant granted by the said Secretary of State in pursuance of this section shall remain in force for one week only, but may

1. This section was superseded in Gt. Britain by the Cheap Trains Act (see p. 828), but still applies to Northern Ireland. The section has been applied to the Territorial Army by T.R.F. Act, 1907, and Order in Council dated 19th March, 1908.

be renewed from week to week so long as, in the opinion of the said Secretary of State, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the Secretary of State under this section as may be agreed upon between the said Secretary of State and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by "The Lands Clauses Consolidation Act, 1845."

Where any railroad or plant is taken possession of in the name or on behalf of Her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such person or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against Her Majesty.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or required for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

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### Cheap Trains Act, 1883.

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[46 & 47 Vict., c. 34.]

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Extract from

*An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the conveyance of the Queen's Forces by Railway.* [20th August, 1883.]

Convey-  
ance of the  
Queen's  
forces at  
reduced  
rates.

6.—(1) For the purpose of moving by railway on any occasion of the public service—

(a) any of the officers or men in or belonging to Her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and

(b) any of the officers or soldiers in Her Majesty's regular reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law; and

44 & 45  
Vict. c. 28.

(c) any officers or men of any police force ;

(all and any of which officers, soldiers, and men are in this Act called " the forces " ) ;

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessities and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authority, and subject to or in default of agreement on the following terms :—

- (i) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified in the route, all carriages being protected from the weather and having proper accommodation :
- (ii) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three-fourths ; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three-fourths, as for four officers and one hundred and forty-six soldiers or other persons ; and for the numbers in excess of the said one hundred and fifty, one half :
- (iii) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult :
- (iv) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed ; and any excess of weight shall be conveyed at not more than two-thirds of the rate charged to the public for excess luggage :
- (v) The said public baggage, stores, arms, ammunition, necessities, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same :<sup>1</sup>
- (vi) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty or one of Her Majesty's Principal Secretaries of State, as the case may be.

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<sup>1</sup> See also Railways Act, 1921, s. 34 (2).

(2) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorised in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorised in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorised in this behalf by the police authority.

(3) Fares payable under this section shall be exempt from passenger duty.

(4) Where a company has by refusal or neglect to comply with an order of the Minister of Transport or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed.

11. This Act shall not extend to Ireland.<sup>1</sup>

### National Defence Act, 1888.

[51 & 52 VICT., c. 31.]

#### Extract from

*An Act to make better provision respecting National Defence.*

[13th August, 1888.]

Power of Government, on occasion of national danger, or great emergency, to have precedence in traffic of railway.

4.—(1) Whenever an order for the embodiment of the Militia<sup>2</sup> is in force, it shall be lawful for Her Majesty the Queen, by order signified under the hand of a Secretary of State, to declare that it is expedient for the public service that traffic for naval and military purposes shall have on the railways in the United Kingdom, or such of them as is mentioned in the order, precedence over other traffic.

(2) When any such order is in force as respects a railway, an officer of any part of Her Majesty's naval or military forces acting under the authority of a Secretary of State or the Admiralty may, by warrant under his hand addressed to the railway company working that railway, require that such traffic as may be specified in the warrant shall be received and forwarded on the railway in priority to any other traffic, and the company shall comply with such warrant, and shall, so far as may be necessary, suspend the receiving and forwarding of all other traffic on such railway.

(3) If a director of or person employed by a railway company refuses or fails to comply with the exigency of the warrant, or obstructs the carrying thereof into effect, he shall be liable on

<sup>1</sup> As to Northern Ireland, see the Railway Regulation Acts, 1842 and 1844, *supra*.

<sup>2</sup> This is applied to the Territorial Army by the T.R.F. Act, 1907, and Order in Council, dated March 19, 1908.

summary conviction to a fine not exceeding fifty pounds, and any such officer as aforesaid may take such means as seem to him necessary for carrying (and if need be, by force) the warrant into effect.

(4) A warrant issued in pursuance of this section shall not be in force for more than one month after the date thereof unless renewed.

(5) An order made by Her Majesty in pursuance of this section may be revoked by Her Majesty at any time, and upon the Militia being ordered to be disembodied shall cease to operate.

(6) There shall be paid, out of moneys provided by Parliament, to a railway company required to receive and forward traffic in pursuance of this section, such reasonable remuneration as may be agreed upon, or in default of agreement may be determined by arbitration.

(7) If any person suffers any loss by reason of anything done under the authority of a Secretary of State or the Admiralty in pursuance of this section, he may petition the Secretary of State or the Admiralty for compensation, and the Secretary of State or Admiralty may pay out of moneys provided by Parliament such reasonable compensation as may seem just; but no such compensation shall be paid in respect of any loss arising under a contract which was made subsequently to the date of an order under this section, or which, though made before, might have been determined subsequently to that date.

(8) For the purposes of this section—

The expression "railway" includes any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other; and

The expression "person" includes any person or body of persons, corporate or unincorporate; and

The expression "railway company" means any person as above defined who as owner or lessee of a railway or otherwise is actually engaged in working a railway; and

The expression "traffic" includes persons, animals, goods, and things of every description which are ordinarily carried, or are required by virtue of this Act to be received and forwarded, on a railway.

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### The Railways Act, 1921.

[11 & 12 Geo. V., c. 55.]

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#### Extract from

*An Act to provide for the reorganisation and further regulation of Railways and the discharge of liabilities arising in connection with the possession of Railways, and otherwise to amend the Law relating to Railways, and to extend the duration of the Rates Advisory Committee.* [19th August, 1921.]

34.—(1) As from the appointed day all statutory provisions, and the provisions of all agreements with respect to classification of merchandise and with respect to charges for or in connection

Repeal of  
existing  
provisions.

with the carriage of merchandise or passengers by any railway which becomes a railway of an amalgamated company, or of a railway company to which a schedule of standard charges is applied, shall to the extent to which those provisions relate to the matters aforesaid be repealed and cease to be operative, except so far as any statutory provision authorises for the purpose of calculation of distance a special mileage to be allotted in respect of any portion of a railway, and except so far as, in the case of any such agreement or in the case of a statutory provision fixing a special charge, it may be continued under the provisions of this Part of this Act or by an order of the rates tribunal :

46 & 47  
Vict. c. 34.

Provided that nothing in this Act shall, except as otherwise expressly provided, affect the provisions of section six of the Cheap Trains Act, 1883 (which relates to the conveyance of His Majesty's forces and matters connected therewith).

### Reserve Forces Act, 1882.

[45 & 46 Vict., c. 48.]

*An Act to consolidate the Acts relating to the Reserve Forces.*

[18th August, 1882.]

#### PART I.—ARMY RESERVE.

Establish-  
ment of  
army  
reserve.

3. It shall be lawful for Her Majesty to keep up a force in the United Kingdom, called the army reserve, to consist of two classes, as follows :—

*Class I.*—The first class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve either in the United Kingdom or elsewhere, and shall consist of men who, having served in any of Her Majesty's regular forces, may either be transferred to the reserve in pursuance of the Army Act, 1881, or be enlisted or re-engaged in pursuance of this Act.

For the purpose of establishing a supplemental reserve it shall be lawful for Her Majesty to direct that the first class of the army reserve shall consist of two divisions,

*Class II.*—The second class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve in the United Kingdom only, and shall consist of men who—

- (a) being out-pensioners of Chelsea Hospital, or (on account of service in the Royal Marines) out-pensioners of Greenwich Hospital ; or
  - (b) having served in any of Her Majesty's regular forces for not less than the full term of their original enlistment,
- may be enlisted or re-engaged in pursuance of this Act.

Procedure  
and term of  
service on  
enlistment  
or re-en-  
gagement.

4. Every man who enters the army reserve—

- (a) If he enters otherwise than by transfer to the reserve in pursuance of the Army Act, 1881, shall be enlisted ; and
- (b) If he is re-engaged in the army reserve, shall be re-engaged, in such manner, and for a term of such length, and to begin at such date, as may be prescribed.



5.—(1) It shall be lawful for a Secretary of State, at any time when occasion appears to require, to call out the whole or so many as he thinks necessary of the men belonging to the army reserve, to aid the civil power in the preservation of the public peace.

Calling out  
army  
reserve in  
aid of the  
civil power.

(2) It shall be lawful for any officer commanding Her Majesty's forces in any town or district, on the requisition in writing of any justice of the peace, to call out for the purpose aforesaid the men belonging to the army reserve who are resident in such town or district, or such of them as he may think necessary.

(3) Any power by this section vested in a Secretary of State may as regards men resident in Ireland be exercised also by the Lord Lieutenant.

6.—(1) Where a man belonging to the army reserve—

- (a) Fails without reasonable excuse on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve; or
- (b) When required by or in pursuance of the orders or regulations in force under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement; or
- (c) Uses threatening or insulting language, or behaves in an insubordinate manner, to any officer or warrant or non-commissioned officer who in pursuance of the orders or regulations in force under this Act is acting in the execution of his office, and who would be the superior officer of such man if such man were subject to military law; or
- (d) By any fraudulent means obtains or is accessory to the obtaining of any pay or other sum contrary to the orders or regulations in force under this Act; or
- (e) Fails without reasonable excuse to comply with the orders or regulations in force under this Act,

Punish-  
ment of  
certain  
offences by  
army  
reserve  
men.

he shall be guilty of an offence

(2) A man belonging to the army reserve who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say,

- (a) be liable to be tried by court-martial, and on conviction to suffer imprisonment, or such less punishment as in the Army Act, 1881, mentioned; or
- (b) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine;

and may in any case be taken into military custody.

(3) Where a man belonging to the army reserve commits in the presence of any officer any offence under this section, or any offence under subsection two or subsection three of section one hundred and forty-two of the Army Act, 1881 (relating to the punishment of personation), that officer may, if he thinks fit, order such man, in lieu of being taken into military custody, to be taken into custody

by any constable, and brought before a court of summary jurisdiction for the purpose of being dealt with by that court.

(4) A certificate purporting to be signed by an officer who is therein mentioned as an officer appointed to pay a man belonging to the army reserve, and stating that such man has failed on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, shall, without proof of the signature or appointment of such officer, be evidence of such failure.

(5) Where a man belonging to the army reserve is required by or in pursuance of the orders or regulations in force under this Act to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting men belonging to the army reserve, or for any other purpose connected with such reserve, and stating that the man failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence of such failure.

7. A man belonging to the army reserve shall not be liable to serve the office of constable, or any other parochial, township, or borough office.

Men  
exempt  
from parish  
offices, &c.

## PART II.—MILITIA RESERVE.

### PART III.—GENERAL.

#### *Annual Training and Calling out on Permanent Service of Reserves.*

11.—(1) All or any of the men belonging to the army reserve . . . . . may be called out for annual training at such time or times, and at such place or places within the United Kingdom, and for such period or periods, as may be prescribed, not exceeding in any one year . . . . . twelve days or twenty drills.

Annual  
training of  
reserve  
forces.

(2) Every man so called out may during his annual training be attached to and trained with a body of the regular or auxiliary forces.

(3) . . . . .

12.—(1) In case of imminent national danger or of great emergency, it shall be lawful for Her Majesty in Council by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation, if Parliament be not then sitting, to order that the army reserve . . . . . shall be called out on permanent service.

Calling out  
reserve  
forces on  
permanent  
service.

(2) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for calling out the . . . force mentioned in the proclamation, or all or any of the men belonging thereto.

(3) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and every man for the time being called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(4) A proclamation under this section shall for the purposes of the Army Act, 1881, be deemed to be a proclamation requiring soldiers in the reserve to re-enter upon army service.

13. Whenever Her Majesty orders the army reserve . . . . . Assembly of Parliament when reserve forces ordered to be called out on permanent service.  
 . . . . . to be called out on permanent service, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

14.—(1) A man belonging to . . . . . the reserve forces when called out on permanent service shall be liable to serve until Her Majesty no longer requires his services, so, however, that he shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and any further period not exceeding twelve months during which as a soldier of the regular forces he can, under section eighty-seven of the Army Act, 1881, be detained in service after the time at which he would otherwise be entitled to be discharged. Service of reserve men called out.

(2) A man called out on permanent service shall during his service form part of the regular forces, and be subject to the Army Act, 1881, accordingly, and the competent military authority within the meaning of Part Two of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and the competent military authority within the meaning of the said Part Two may within three months after such appointment transfer him to any other corps . . . . .

(3) Nothing in this section shall render a man in the second class of the army reserve liable to serve out of the United Kingdom, and such man may from time to time be transferred from one corps to another for the purpose of securing his non-liability to service out of the United Kingdom.

15.—(1) When a man belonging to the army . . . . . reserve is called out for annual training or on permanent service, or when a man belonging to the army reserve is called out in aid of the civil power, and such man, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, he shall— Punishment for non-attendance for annual training or permanent service, &c.

- (a) If called out on permanent service, or in aid of the civil power, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, 1881; and
- (b) If called out for annual training, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881.

(2) A man belonging to the army . . . . . reserve who commits an offence under this section, or under section twelve or section

fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows ; that is to say,

- (a) be liable to be tried by court-martial, and convicted and punished accordingly ; or
- (b) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine ;

and may in any case be taken into military custody.

Supple-  
mental pro-  
visions as  
to deserters  
and  
absentees.

16.—(1) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a man who is a deserter or absentee without leave from the army . . . reserve within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

(2) Any person who falsely represents himself to be a deserter or absentee without leave from the army . . . reserve shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

Punish-  
ment for  
inducing  
reserve man  
to desert or  
absent him-  
self.

17.—(1) Any person who by any means whatsoever—

- (a) Procures or persuades any man belonging to the army . . . reserve to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any man belonging to the army . . . reserve to commit such offence ; or
- (b) Knowing that a man belonging to the army . . . reserve is about to commit an offence of absence without leave within the meaning of this Act, aids or assists him in so doing ; or
- (c) Knowing any man belonging to the army . . . reserve to be an absentee without leave within the meaning of this Act, conceals such man, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue ;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a man belonging to the army . . . reserve were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881 ; and any person who, knowing any man belonging to the army . . . reserve to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such man, shall be deemed to aid him in concealing himself within the meaning of the said section.

*Supplemental.*

18.—(1) Subject to the provisions of this Act, and save as is otherwise prescribed, a man enlisting in the army . . . reserve shall be attested in the same manner as a recruit in the regular forces, and the following sections of the Army Act, 1881, (that is to say)—

Attestation of men enlisting in reserve forces.

Section eighty (relating to the mode of enlistment, and attestation);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence,

shall apply in like manner as if they were herein re-enacted, with the substitution—

(a) Of "man," or, if the context so requires, "reserve man," for "soldier," and of "army reserve . . ." for "regular forces"; and

(b)

(2) A man so enlisting may be attested by a regular officer, . . . and the sections of the Army Act, 1881, in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the army . . . reserve, be construed as if a justice of the peace in those sections included such an officer.

19.—(1) Where a man belonging to the army reserve . . . is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days; and the record mentioned in that section may be entered in manner thereby provided, or in such regimental books and by such officer as may be prescribed.

Record of illegal absence of reserve man.

(2) Where a man belonging to the army reserve . . . fails to appear at the time and place at which he is required upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of such absence shall be made by the prescribed officer in the prescribed manner and in the prescribed regimental books, and such entry shall be conclusive evidence of the fact of such absence.

20.—(1) Subject to the provisions of this Act, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the army reserve . . . and with respect to other matters and things relating to the army reserve . . . including any

Orders and regulations as to reserve forces.

matter by this Act authorised to be prescribed, or expressed to be subject to orders or regulations.

(2) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(3) Where a man entered the army . . . reserve before the date of any order or regulation made under this Act, nothing in such order or regulation shall render such man liable, without his consent, to be appointed, transferred, or attached to any military body to which he could not, without his consent, have been appointed, transferred, or attached if the said order or regulation had not been made.

(4) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

Exercise of  
powers  
vested in  
holder of  
military  
office.

21.—(1) Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may in relation to the reserve forces be exercised by or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

(2) Where by this Act, or by any order or regulation in force under this Act, any order is authorised to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

Pension of  
army  
reserve  
men.

22. Where, either before or after the passing of this Act, a man in the army reserve has been called out on permanent service, and at the termination of such service has been returned to the army reserve, and has become entitled to pension under any order or regulation in force under this Act (whether made before or after such calling out or return), the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction.

Application  
to reserve  
forces of  
enactments  
respecting  
exemptions  
from tolls  
and convey-  
ance of  
regular  
forces.

23.—(1) For the purpose of section one hundred and forty-three of the Army Act, 1881, and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the army . . . reserve, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of Her Majesty's regular forces on duty.

(2) All enactments for the time being in force concerning the conveyance by railway or otherwise of any part of the regular forces, and their baggage, stores, arms, ammunition, and other necessities and things, shall apply as if the army . . . reserve were such part of the regular forces.

Notices.

24. With respect to notices required in pursuance of the orders

or regulations in force under this Act to be given to men belonging to the army . . . reserve, the following provisions shall have effect :

- (1) A notice may be served on any such man either by being sent by post to his last registered place of abode, or by being served in the prescribed manner ;
- (2) Evidence of the delivery at the last registered place of abode of a man belonging to the army . . . reserve of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man ;
- (3) The publication of a notice in the prescribed manner in the parish in which the last registered place of abode of a man belonging to the army . . . reserve is situate shall be sufficient notice to such man, notwithstanding that a copy of such notice is not served on him ;
- (4) Every constable, overseer of the poor, and inspector of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

25.—(1) Any offence which under this Act is punishable on conviction by court-martial shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

*Trial of offences.*

(2) Any offence which under this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act.

(3) Save as provided by the said section one hundred and sixty-six, the minimum fixed by this Act for the amount of any fine or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything contained in any other Act, not be reduced by way of mitigation or otherwise.

(4) For all purposes in relation to the arrest, trial, and punishment of a person for any offence punishable under this Act, including the summary dealing with the case by the commanding officer, this Act shall apply to the Channel Islands and the Isle of Man.

26. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognizable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect :—

- (1) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but

*Provisions as to offences triable both by court-martial and by court of summary jurisdiction.*

may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act.<sup>1</sup>

- (2) Proceedings against an alleged offender, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted whether the term of his reserve service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to an officer who under the orders or regulations in force under this Act has power to direct the offender to be tried by a court-martial or by a court of summary jurisdiction, if the offender is apprehended at that time, or if he is not apprehended at that time, then within two months after the time at which he is apprehended, whether such apprehension is by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceedings so instituted.
- (3) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

#### Evidence.

27.—(1) Section one hundred and sixty-four of the Army Act, 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man belonging to the army . . . reserve who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence) shall apply to all proceedings under this Act.

#### Definitions.

28. In this Act, unless the context otherwise requires—

The expression "man" includes a warrant officer not holding an honorary commission, and a non-commissioned officer.

The expression "out-pensioners of Chelsea Hospital" includes all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty.

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Other expressions have the same meaning as they have in the Army Act, 1881.

In the Army Act, 1881, the expression "army reserve force" . . . shall . . . mean the army reserve . . . under this Act.

#### Repeal of Acts.

29.

(2) All orders, warrants, regulations, and directions in relation to the army reserve force . . . which exist at the commencement of this Act shall, so far as consistent with the tenor thereof, be of the same effect as if they were orders or regulations under this Act, and may be revoked or altered accordingly.

(3) [*spent*].

(4) [*spent*].

1. He is not to be tried by a court of summary jurisdiction without written sanction of an officer who has power to direct his trial by court-martial, or some authority superior to that officer; K.R. 440.



**Reserve Forces Act, 1890.**

[53 &amp; 54 Vict., c. 42.]

Extract from

*An Act to remove certain doubts which have arisen under the Reserve Forces Act, 1882, and for other purposes connected therewith.*

[14th August, 1890.]

Whereas certain men engaged in railway, post office, or telegraph service, and being volunteers, have been enlisted in Her Majesty's regular forces, and immediately upon such enlistment been transferred, under the Army Act, 1881, to the reserve, and have been attached as supernumeraries to a volunteer corps, and doubts have arisen as to whether such enlistment, transfer, and attachment are authorised by law, and it is expedient to remove such doubts :

Be it enacted . . . . as follows :—

1. It is hereby declared that regulations of a Secretary of State under the Army Act can authorise any man having the special qualifications prescribed by those regulations to be enlisted in any of Her Majesty's regular forces, and immediately upon such enlistment to enter the reserve.

Authority  
to transfer  
men to  
reserve  
imme-  
diately on  
enlistment.

[ss. 2 and 3 are omitted as obsolete.]

**Reserve Forces and Militia Act, 1898.**

[61 &amp; 62 Vict., c. 9.]

*An Act to amend the Law relating to the Reserve Forces and Militia.*

[1st July, 1898.]

1. Any man belonging to the first class of the army reserve, whose character on transfer to the army reserve is good, shall, if he so agrees in writing, be liable during the first twelve months<sup>1</sup> of his service in that reserve to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in section twelve of the Reserve Forces Act, 1882, and the calling out of men under this Act shall not involve the meeting of Parliament as required by section thirteen of that Act.

Liability of  
members of  
the Army  
Reserve to  
be called  
out on  
permanent  
service.  
46 & 46  
Vict. c. 48.

Provided as follows :—

- (a) The number of the men so liable shall not at any one time exceed five thousand ;<sup>2</sup>
- (b) The power of calling out men under this section shall not be exercised except when they are required for service

1. See s. 32 (2) T.R.F. Act, 1907, which extends this period to the first two years' service in the first class of the army reserve.

2. See s. 32 (2) of the T.R.F. Act, 1907, which raised the number from 5,000 to 6,000.

outside the United Kingdom when warlike operations are in preparation or in progress ;

(c) A man called out under this section shall not be liable to serve for more than twelve months ;

(d) Any agreement under this section may be revoked by three months' notice in writing ; and

(e) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be.

Provision as  
to numbers  
authorised  
by Army  
Act.

3. The number of men for the time being employed under this Act shall not be reckoned in the number of the forces authorised by the Army Act for the time being in force.

### Reserve Forces Act, 1899.

[62 & 63 VICT., c. 40.]

*An Act to amend the Law relating to the Reserve Forces.*

[9th August, 1899.]

Permission  
to army  
reserve men  
to reside out  
of United  
Kingdom.

1. Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving out of the United Kingdom, he may, at his own request, be transferred to the reserve without being required to return to the United Kingdom, but subject to such conditions as to residence, as to liability to be called out for annual training or on permanent service or in aid of the civil power, or as to any other matters, as may be prescribed by regulations under section twenty of the Reserve Forces Act, 1882, and thereupon the provisions of that Act, and of the Acts amending that Act, shall apply in the case of the soldiers so transferred with such adaptations as may be made by those regulations.

45 & 46  
Vict. c. 48.

### Reserve Forces Act, 1900.

[63 & 64 VICT., c. 42.]

Extract from

*An Act to amend the Reserve Forces Act, 1882.*

[6th August, 1900.]

Amendment  
of 45 & 46  
Vict. c. 48,  
s. 3, as to  
calling out  
on perma-  
nent service.

1. Men in the second division of the first class of the army reserve shall be liable to be called out on permanent service, notwithstanding that directions have not been given for calling out the whole of the first division on such service . . . . .

## Reserve Forces Act, 1906.

[6 EDW. 7, c. 11.]

*An Act to amend the Law relating to the Reserve Forces.*

[20th July, 1906.]

1.—(1) Notwithstanding anything in the Reserve Forces Acts, a man belonging to the Army Reserve may, if so authorised by or under the directions of the Secretary of State<sup>1</sup>, reside in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom, and men may be enlisted into the Army Reserve in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom except in a colony possessing responsible government, and those Acts shall, subject to such adaptations as may be made under this section, apply to such men whilst so residing and to such enlistment.

*Extension of  
Reserve  
Forces Acts  
to men when  
outside the  
United  
Kingdom.*

(2) Regulations made under section twenty of the Reserve Forces Act, 1882, may prescribe the conditions under which men belonging to the Army Reserve may, if so authorised, reside outside the United Kingdom, and the conditions under which men may be enlisted into the Army Reserve outside the United Kingdom, and may make such adaptations in the Reserve Forces Acts as may be necessary for the purpose of adapting those Acts to the circumstances of the several parts of His Majesty's dominions outside the United Kingdom or of British protectorates.

*45 & 46  
Stat. c. 48.*

(3) In this section the expression "Reserve Forces Acts" means the Reserve Forces Act, 1882, as amended by any subsequent enactment, and includes any enactment applied by that Act as so amended; and the expression "colony possessing responsible government" means any colony which is specified in the Schedule to this Act, or which may hereafter on the grant to the colony of responsible government be added to that Schedule by Order in Council.

. . . . .

## SCHEDULE.

## LIST OF COLONIES.

The Dominion of Canada.  
The Commonwealth of Australia.  
New Zealand.  
Cape Colony.<sup>2</sup>  
Natal.<sup>2</sup>  
Newfoundland.

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1. See K.R. 456, *et seq.*

2. Now included in the Union of South Africa.

**Territorial and Reserve Forces Act, 1907.**

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**ARRANGEMENT OF SECTIONS.**

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**PART I.—COUNTY ASSOCIATIONS.**

## Section.

1. Establishment of associations.
  2. Powers and duties of associations.
  3. Expenses of association.
  4. Regulations.
  5. Joint committees of associations.
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**PART II.—TERRITORIAL FORCE.***Raising and Maintenance of Force.*

6. Raising and number of Territorial Force.

*Government, Discipline, and Pay.*

7. Government, discipline, and pay of Territorial Force.
8. First appointments to lowest rank of officers of the Territorial Force.

*Enlistment, Service, Discharge.*

9. Enlistment, term of service, and discharge.
10. Application of certain sections of the Army Act.
11. Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules.
12. Enlistment into army reserve.
13. Area of service of Territorial Force.

*Training.*

14. Preliminary training of recruits of Territorial Force.
15. Annual training.
16. Laying of draft Orders in Council relating to training before Parliament.

*Embodiment.*

17. Embodiment of Territorial Force.
18. Disembodying of Territorial Force.

*Notices.*

## Section.

19. Service and publication of notices.

*Offences.*

20. Punishment for failure to attend on embodiment.  
21. Punishment for failure to fulfil training conditions.  
22. Wrongful sale, &c., of public property.

*Civil Rights and Exemptions.*

23. Civil rights and exemptions.

*Legal Proceedings.*

24. Trial of offences and application of penalties.  
25. Supplemental provisions as to trial of offences.  
26. Evidence.

*Miscellaneous.*

27. Exercise of powers vested in holder of military office.  
28. Application of enactments.

*Transitory.*

29. Transitory provisions.

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PART III.—RESERVE FORCES.

30. Enlistment and terms of service of special reservists.  
31. Agreements as to extension of service.  
32. Liability of reservists to be called out.  
33. Power to form battalions, &c., of reservists.  
34. Transfer of Militia battalions to reserve.  
35. Amendment of 45 & 46 Vict., c. 48, s. 6 (4).  
36. Commissions in reserve of Officers not to vacate seat in Parliament.

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PART IV.—SUPPLEMENTAL.

37. Provisions as to orders, schemes, and regulations.  
38. Definitions.  
39. Special provisions as to special places.  
40. Application to Scotland and the Isle of Man.  
41. Short title.  
**SCHEDULES.**

## Territorial and Reserve Forces Act, 1907.

[7 EDW. 7, c. 9.]

NOTE.—All references in this Act to the "Territorial Force" are to be construed as references to the "Territorial Army." (See T.A. and Militia Act, 1921, s. 1 (on p. 867) ).

*An Act to provide for the reorganisation of His Majesty's Military Forces and for that purpose to authorise the establishment of County Associations, and the raising and maintenance of a Territorial Force, and for amending the Acts relating to the Reserve Forces.* [2nd August, 1907.]

## PART I.

COUNTY ASSOCIATIONS.<sup>1</sup>

Establish-  
ment of  
associations.

1.—(1) For the purposes of the reorganisation under this Act of His Majesty's military forces other than the regulars and their reserves, and of the administration of those forces when so reorganised, and for such other purposes as are mentioned in this Act, an association may be established for any county in the United Kingdom, with such powers and duties in connection with the purposes aforesaid as may be conferred on it by or under this Act.

(2) Associations shall be constituted, and the members thereof shall be appointed and hold office in accordance with schemes to be made by the Army Council.

(3) Every such scheme shall provide—

- (a) For the date of the establishment of the association :
- (b) For the incorporation of the association by an appropriate name, with power to hold land for the purposes of this Act without licence in mortmain :
- (c) For constituting the lieutenant of the county, or failing him such other person as the Army Council may think fit, president of the association :
- (d) For the appointment of such number of officers representative of all arms and branches of the Territorial Force raised under this Act within the county (not being less than one half of the whole number of the association) as may be specified in the scheme :
- (e) For the appointment by the Army Council, where it appears desirable, and after consultation with, and on the recommendation of, the authorities to be represented, of representatives of county and county borough councils and universities wholly or partly within the county :
- (f) For the appointment of such number of co-opted members as the scheme may prescribe, including, if thought desirable, representatives of the interests of employers and workmen :

1. For modification as respects county joint associations see 14 & 15 Geo. V. c. 14, s. 1 (p. 866).

- (g) For the appointment by the Army Council during the first three years after the passing of this Act, and subsequently for the election of a chairman and vice-chairman by the association, and for defining their powers and duties :
  - (h) For the mode of appointment, term of office, and rotation of members of the association, and the filling of casual vacancies :
  - (i) For the appointment by the association, subject to the approval of the Army Council, of a secretary and other officers of the association, and the accountability of such officers, and for the provision of offices :
  - (j) For the procedure to be adopted, including the appointment of committees and the delegation to committees of any of the powers or duties of the association :
  - (k) For enabling such general officers of any part of His Majesty's forces, and not being members of the association, as may be specified in the scheme, or officers deputed by them, to attend the meetings of the association and to speak, but not to vote :
  - (l) For dividing the county, where on account of its size or population it seems desirable to do so, into two or more parts, and for constituting sub-associations for the several parts, and for apportioning amongst the several sub-associations all or any of the powers and duties of the association, and regulating the relations of sub-associations to the association and to one another.
- (4) A scheme may contain any consequential, supplemental, or transitory provisions which may appear to be necessary or proper for the purposes of the scheme, and also as respects any matter for which provision may be made by regulations under this Act and for which it appears desirable to make special provision affecting the association established by the scheme.
- (5) All schemes made in pursuance of this Part of this Act shall be laid before both Houses of Parliament.

(6) [Repealed.]

2.—(1) It shall be the duty of an association when constituted to make itself acquainted with and conform to the plan of the Army Council for the organisation of the Territorial Force within the county, and to ascertain the military resources and capabilities of the county and to render advice and assistance to the Army Council and to such officers as the Army Council may direct, and an association shall have, exercise, and discharge such powers and duties connected with the organisation and administration of His Majesty's military forces as may for the time being be transferred or assigned to it by order of His Majesty signified under the hand of a Secretary of State or, subject thereto, by regulations under this Act, but an association shall not have any powers of command or training over any part of His Majesty's military forces.

Powers and  
duties of  
association &c

(2) The powers and duties so transferred or assigned may include any powers conferred on or vested in His Majesty, and any powers or duties conferred or imposed on the Army Council or a Secretary

of State, by statute or otherwise, and in particular respecting the following matters :—

- (a) The organisation of the units of the Territorial Force and their administration (including maintenance) at all times other than when they are called out for training or actual military service, or when embodied :
- (b) The recruiting for the Territorial Force both in peace and in war, and defining the limits of recruiting areas :
- (c) The provision and maintenance of rifle ranges, buildings, magazines, and sites of camps for the Territorial Force :
- (d) Facilitating the provision of areas to be used for manoeuvres :
- (e) Arranging with employers of labour as to holidays for training, and ascertaining the times of training best suited to the circumstances of civil life :
- (f) Establishing or assisting cadet battalions and corps and also rifle clubs, provided that no financial assistance out of money voted by Parliament shall be given by an association in respect of any person in a battalion or corps in a school in receipt of a parliamentary grant until such person has attained the age of sixteen :
- (g) The provision of horses for the peace requirements of the Territorial Force :
- (h) Providing accommodation for the safe custody of arms and equipment :
- (i) The supply of the requirements on mobilisation of the units of the Territorial Force within the county, in so far as those requirements are directed by the Army Council to be met locally, such requirements where practicable to be embodied in regulations which shall be issued to county associations from time to time, and on the first occasion not later than the first day of January one thousand nine hundred and nine :
- (j) The payment of separation and other allowances to the families of men of the Territorial Force when embodied or called out on actual military service :
- (k) The registration in conjunction with the military authorities of horses for any of His Majesty's forces :
- (l) The care of reservists and discharged soldiers.

Expenses of  
association.

3.—(1) The Army Council shall pay to an association, out of money voted by Parliament for army services, such sums as, in the opinion of the Army Council, are required to meet the necessary expenditure connected with the exercise and discharge by the association of its powers and duties.

(2) An association shall submit to the Army Council annually, at the prescribed time, and may submit at any other time for any special purpose, in the prescribed form and manner, a statement of its necessary requirements, and all payments to an association by the Army Council shall be made upon the basis of such statements in so far as they are approved by the Army Council.

(3) Subject to regulations under this Act, all money so paid to an association shall be applicable to any of the purposes specified in the approved statements in accordance with which the money has been granted, but not otherwise except with the written consent of the Army Council :



Provided that nothing in this section shall be construed as enabling the Army Council to give their consent to the application of money to any purpose to which, apart from this section, it could not lawfully be applied, or to give their consent, without the authority of the Treasury, in any case in which, apart from this section, the authority of the Treasury would be required.

(4) All other money received by an association (except such money, if any, as may be received by it for specified purposes) shall be available for the purposes of any of its powers and duties.

(5) An association shall cause its accounts to be made up annually and audited in such manner as may be prescribed, and shall send copies of its accounts as audited, together with any report of the auditors thereon, to the Army Council.

(6) Regulations made for the purposes of this section shall be subject to the consent of the Treasury.

(7) The members of an association shall not be under any pecuniary liability for any act done by them in their capacity as members of such association in carrying out the provisions of this Act.

4.—(1) Subject to the provisions of this Act, the Army Council may make regulations for carrying this Part of this Act into effect, and may by those regulations, amongst other things, provide for the following matters :—

Regulations.

- (a) For regulating the manner in which powers are to be exercised and duties performed by associations, and for specifying the services to which money paid by the Army Council is to be applicable :
- (b) For authorising and regulating the acquisition by or on behalf of an association of land for the purposes of this Act and the disposal of any land so acquired :
- (c) For authorising and regulating the borrowing of money by an association :
- (d) For authorising the acceptance of any money or other property, and the taking over of any liability, by an association, and for regulating the administration of any money or property so acquired and the discharge of any liability so taken over :
- (e) For facilitating the co-operation of an association with any other association, or with any local authority or other body, and for providing by the constitution of joint committees or otherwise for co-operative action in the organisation and administration of divisions, brigades, and other military bodies, and for the provision of assistance by one association to another :
- (f) For affiliating cadet corps and battalions, rifle clubs, and other bodies to the Territorial Force or any part thereof :
- (g) For or in respect of anything by this Part of this Act directed or authorised to be done or provided by regulations or to be done in the prescribed manner :
- (h) For the application for the purposes of this Part of this Act, as respects any matters to be dealt with by regulations, of any provision in any Act of Parliament dealing with the like matters, with the necessary modifications or adapta-

tions, and in particular of any provisions as to the acquisition of land by or on behalf of volunteer corps.

(2) All regulations made in pursuance of this Part of this Act shall be applicable to all associations, except in so far as may be otherwise provided by the regulations or by any scheme made under this Part of this Act.

(3) All regulations made under this Part of this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

Joint committees of associations.

5.—(1) Any county associations may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

(2) Any association appointing a joint committee under this subsection may delegate to it any power which such association might exercise for the purpose for which the committee is appointed.

(3) Subject to the terms of delegation any such joint committee shall in respect of any matter delegated to it have the same power in all respects as the associations appointing it.

(4) The costs of a joint committee shall be defrayed by the associations by whom it has been appointed, in such proportion as may be agreed between them, and the accounts of such joint committees and their officers shall for the purposes of the provisions of this Act be deemed to be accounts of the associations appointing them and of their officers.

## PART II.

### TERRITORIAL FORCE.

#### *Raising and Maintenance of Force.*

Raising and number of Territorial Force.

6. It shall be lawful for His Majesty to raise and maintain a force, to be called the "Territorial Force,"<sup>1</sup> consisting of such number of men as may from time to time be provided by Parliament.

#### *Government, Discipline and Pay.*

Government, discipline, and pay of Territorial Force.

7.—(1) Subject to the provisions of this Part of this Act, it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, to make orders with respect to the government, discipline, and pay and allowances of the Territorial Force, and with respect to all other matters and things relating to the Territorial Force, including any matter by this Part of this Act authorised to be prescribed or expressed to be subject to orders or regulations<sup>2</sup>.

(2) The said orders may provide for the formation of men of the Territorial Force into regiments, battalions, or other military bodies, . . . . . and for appointing, transferring, or attaching men of the Territorial Force to corps, and for posting, attaching, or otherwise dealing with such men within the corps ;

1. Amended to "Territorial Army" by 11 & 12 Geo. V., c. 37, s. 1. (See note on p. 846.)

2. See Order by His Majesty on p. 17 of T.A. Regs.

and may provide for the constitution of a permanent staff, including adjutants and staff serjeants who shall, except in special circumstances certified by the general officer commanding, be members of His Majesty's regular forces; and may regulate the appointment, rank, duties, and numbers of the officers and non-commissioned officers of the Territorial Force.

(3) Subject to the provisions of any such order, the Army Council may make general or special regulations with respect to any matter with respect to which His Majesty may make orders under this section.

(4) Provided that the said orders or regulations shall not—

- (a) affect or extend the term for which, or the area within which, a man of the Territorial Force is liable under this Part of this Act to serve; or
- (b) authorise a man of the Territorial Force when belonging to one corps to be transferred without his consent to another corps; or
- (c) when the corps of a man of the Territorial Force includes more than one unit, authorise him when not embodied to be posted, without his consent, to any unit other than that to which he was posted on enlistment; or
- (d) when a corps of a man of the Territorial Force includes any battalion or other body of the regular forces, authorise him to be posted without his consent to that battalion or body.

(5) Where a man of the Territorial Force was enlisted or re-engaged before the date of any order or regulation under this Part of this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made.

(6) Orders and regulations under this section may provide for the formation of a reserve division of the Territorial Force, and may relax or dispense with any of the provisions of this Act relating to the training of the men of the Territorial Force so far as regards their application to men in the reserve division, and may, notwithstanding anything in this section, authorise a man in the reserve division to be transferred from one corps to another, so, however, that a man in the reserve division shall not, without his consent, be transferred to a corps of another arm.

(7) All orders and general regulations made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

8. Subject to any directions which may be given by His Majesty, first appointments to the lowest rank of officer in any unit of the Territorial Force shall be given to persons recommended by the president of the association for the county, if a person approved by His Majesty is recommended by the president for any such appointment within thirty days after notice of a vacancy for the appointment has been given to the president in the prescribed manner, provided he fulfils all the prescribed conditions as to age, physical fitness, and educational qualifications; and, where a unit comprises

First appointments to lowest rank of officers of the Territorial Force.

men of the Territorial Force of two or more counties, the recommendations for such appointments shall be made by the presidents of the associations for the respective counties in such rotation or otherwise as may be prescribed.

*Enlistment, Service, Discharge.*

Enlistment,  
term of ser-  
vice, and  
discharge.

9.—(1) Subject to the provisions of this Part of this Act, all men of the Territorial Force shall be enlisted by such persons and in such manner and subject to such regulations as may be prescribed :

Provided that every man enlisted under this Part of this Act—

- (a) Shall be enlisted for a county for which an association has been established under this Act and shall be appointed to serve in such corps for that county or for an area comprising the whole or part of that county as he may select; and, if that corps comprises more than one unit within the county, shall be posted to such one of those units as he may select :
- (b) Shall be enlisted to serve for such a period as may be prescribed, not exceeding four years, reckoned from the date of his attestation :
- (c) May be re-engaged within twelve months before the end of his current term of service for such a period as may be prescribed not exceeding four years from the end of that term, and on re-engagement shall make the prescribed declaration before a justice of the peace or an officer, and so from time to time.

(2) A man enlisted in the Territorial Force, until duly discharged in the prescribed manner, shall remain subject to this Part of this Act as a man of the Territorial Force.

(3) Any man of the Territorial Force shall, except when a proclamation ordering the Army Reserve to be called out on permanent service is in force, be entitled to be discharged before the end of his current term of service on complying with the following conditions :—

- (i) Giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged ; and
- (ii) Paying for the use of the association for the county for which he was enlisted such sum as may be prescribed not exceeding five pounds ; and
- (iii) Delivering up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property, issued to him, or, in cases where for any good and sufficient cause the delivery of the property aforesaid is impossible, on paying the value thereof :

Provided that it shall be lawful for the association for the county, or for any officer authorised by the association, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with all or any of the above conditions.

(4) A man of the Territorial Force may be discharged by his commanding officer for disobedience to orders by him while doing any military duty, or for neglect of duty, or for misconduct by him

as a man of the Territorial Force, or for other sufficient cause, the existence and sufficiency of such cause to be judged of by the commanding officer :

Provided that any man so discharged shall be entitled to appeal to the Army Council who may give such directions in any such case as they may think just and proper.

(5) Where the time at which a man of the Territorial Force would otherwise be entitled to be discharged occurs while a proclamation ordering the Army Reserve to be called out on permanent service is in force, he may be required to prolong his service for such further period, not exceeding twelve months, as the competent military authority may order.

10.—(1) The following sections of the Army Act shall apply to the Territorial Force (that is to say) :—

Application of certain sections of the Army Act.

Section eighty (relating to the mode of enlistment and attestation) ;

Section ninety-six (relating to the claims of masters to apprentices) ;

44 & 45  
Vict. c. 58.

Section ninety-eight (imposing a fine for unlawful recruiting) ;

Section ninety-nine (making recruits punishable for false answers) ;

So much of section one hundred as relates to the validity of attestation and enlistment or re-engagement ;

Section one hundred and one (relating to the competent military authority) ; and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence.

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution—

(a) Of " Territorial Force " for " regular forces," and of " man of the Territorial Force " for " soldier " ; and

(b) (In section one hundred) of " has not within three months claimed his discharge on any ground on which he is entitled under this subsection to do so " for " has received pay as a soldier of the regular forces during three months."

(2) A recruit may be attested by any lieutenant or deputy-lieutenant of any county in the United Kingdom, or by an officer of the regular or Territorial forces, and the sections of the Army Act in this section mentioned, and also section thirty-three of the same Act, shall as applied to the Territorial Force be construed as if a justice of the peace in those sections included such lieutenant, deputy lieutenant, or officer.

11.—(1) If a person—

(a) Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the Territorial Force without declaring the circumstances of his discharge or dismissal ; or

Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules.

(b) Is concerned when subject to military law in the enlistment for service in the Territorial Force of any man, when he knows or has reasonable cause to believe such man to be

so circumstanced that by enlisting he commits an offence against the Army Act or this Act; or

- (c) Wilfully contravenes when subject to military law any enactments, orders, or regulations which relate to the enlistment or attestation of men in the Territorial Force,

he shall be guilty of an offence, and shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, as the case may be, and may be taken into military custody.

(2) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged for misconduct, or discharged on account of a conviction for felony or a sentence of penal servitude.

Enlistment  
into army  
reserve.

12. If a man of the Territorial Force enlists into the army reserve without being discharged from the Territorial Force, the terms and conditions of his service whilst he remains in the army reserve shall be those applicable to him as a man belonging to the army reserve, and not those applicable to him as a man of the Territorial Force.

Area of  
service of  
Territorial  
Force.

13.—(1) Any part of the Territorial Force shall be liable to serve in any part of the United Kingdom, but no part of the Territorial Force shall be carried or ordered to go out of the United Kingdom.

(2) Provided that it shall be lawful for His Majesty, if he thinks fit, to accept the offer of any part or men of the Territorial Force, signified through their commanding officer, to subject themselves to the liability—

- (a) to serve in any place outside the United Kingdom; or
- (b) to be called out for actual military service for purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Force is embodied or not;

and, upon any such offer being accepted, they shall be liable, whenever required during the period to which the offer extends, to serve or be called out accordingly.

(3) A person shall not be compelled to make such an offer, or be subjected to such liability as aforesaid, except by his own consent, and a commanding officer shall not certify any voluntary offer previously to his having explained to every person making the offer that the offer is to be purely voluntary on his part.

### *Training.*

Preliminary  
training of  
recruits of  
Territorial  
Force.

14.—(1) Every man of the Territorial Force shall, by way of preliminary training, during the first year of his original enlistment—

- (a) If so provided by Order in Council<sup>1</sup>, be trained at such places within the United Kingdom, at such times, and for such periods, not exceeding in the whole the number of

1. No Order in Council has up to the present been issued under this section.

days specified by the Order in Council, as may be prescribed, and may for that purpose be called out once or oftener; and

- (b) Whether such an Order in Council has been made or not, attend the number of drills and fulfil the other conditions prescribed for a recruit of his arm or branch of the service.

(2) The requirement to attend training and drills, and to fulfil conditions under this section, shall be in addition to the requirement to attend training and drills and to fulfil conditions for the purpose of annual training.

15.—(1) Subject to the provisions of this section, every man of the Territorial Force shall, by way of annual training—

- (a) Be trained for not less than eight nor more than fifteen, or in the case of the mounted branch eighteen, days in every year at such times and at such places in any part of the United Kingdom as may be prescribed, and may for that purpose be called out once or oftener in every year;
- (b) Attend the number of drills and fulfil the other conditions relating to training prescribed for his arm or branch of the service:

Provided that the requirements of this section may be dispensed with in whole or in part—

- (i) as respects any unit, by the prescribed general officer; and
- (ii) as respects an individual man, by his commanding officer subject to any general directions by the prescribed general officer.

(2) His Majesty in Council may—

- (a) Order that the period of annual training in any year of all or any part of the Territorial Force be extended, but so that the whole period of annual training be not more than thirty days in any year; or
- (b) Order that the period of annual training in any year of all or any part of the Territorial Force be reduced to such time as to His Majesty may seem fit; or
- (c) Order that in any year the annual training of all or any part of the Territorial Force be dispensed with.

(3) Nothing in this section shall be construed as preventing a man, with his own consent, in addition to annual training, being called up for the purpose of duty or instruction in accordance with orders and regulations under this Part of this Act.

16. Before any Order in Council is made under this Act providing for preliminary training or extending the period of annual training the draft thereof shall be laid before each House of Parliament for a period of not less than forty days during the Session of Parliament, and, if either of those Houses before the expiration of those forty days presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken, without prejudice to the making of a new draft Order.

Laying of draft Orders in Council relating to training before Parliament.

#### *Embodiment.*

17.—(1) Immediately upon and by virtue of the issue of a proclamation ordering the Army Reserve to be called out on permanent service, it shall be lawful for His Majesty to order the

Embodiment of Territorial Force.

Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the Territorial Force, and in particular to make such special arrangements as they think proper with regard to units or individuals whose services may be required in other than a military capacity :

Provided that, where under any such proclamation directions have been issued for calling out all the men belonging to the first class of the Army Reserve, the Army Council shall, within one month after such directions have been issued, issue directions for embodying all the men belonging to the Territorial Force, unless an address has been presented to His Majesty by both Houses of Parliament praying that such directions as last aforesaid be not issued, and such directions shall not, unless the emergency so requires, be given until Parliament has had an opportunity of presenting such an address.

(2) Whenever, in consequence of the calling out of the whole of the first class of the Army Reserve, directions are required under this section to be given for embodying the Territorial Force, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

(3) Every order and all directions given under this section shall be obeyed as if enacted in this Act, and, where such directions for the time being direct the embodiment of any part of the Territorial Force, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and after that time shall be deemed to be embodied, and such officers and men are in this Act referred to as embodied or as the embodied part or parts of the Territorial Force.

Disembod-  
ing of  
Territorial  
Force.

18.—(1) It shall be lawful for His Majesty by proclamation to order that the Territorial Force be disembodied, and thereupon the Army Council shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(2) Until any such proclamation of His Majesty has been issued the Army Council may from time to time, as they may think expedient for the public service, give such directions as may seem necessary or proper for disembodiment of any embodied part of the Territorial Force, and for embodying any part of the Territorial Force not embodied, whether previously disembodied or otherwise.

(3) After the date fixed by the directions for the disembodiment of any part of the Territorial Force, the officers and men belonging to that part shall be in the position of officers and men of the Territorial Force not embodied.

#### Notices.

Service and  
publication  
of notices.

19. Notices required in pursuance of this Part of this Act or of the orders and regulations in force thereunder to be given to men of the Territorial Force shall be served or published in such manner as may be prescribed, and, if so served or published, shall



be deemed to be sufficient notice, and every constable and overseer shall, when so required by or on behalf of the Army Council, conform with the orders and regulations for the time being in force under this Part of this Act with respect to the publication and service of notices, and in default shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

### *Offences.*

**20.**—(1) Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembling on embodiment, shall be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, and shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and convicted and punished accordingly, and may be taken into military custody.

Punishment for failure to attend on embodiment.

(2) Sections one hundred and fifty-three and one hundred and fifty-four of the Army Act shall apply with respect to deserters and desertion within the meaning of this section in like manner as they apply with respect to deserters and desertion within the meaning of those sections, and any person who, knowing any man of the Territorial Force to be a deserter within the meaning of this section or of the Army Act, employs or continues to employ him, shall be deemed to aid him in concealing himself within the meaning of the first-mentioned section.

(3) Where a man of the Territorial Force commits the offence of desertion under this section the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge.

**21.** Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training, or for annual training, or fails to attend the number of drills and fulfil the other conditions relating to preliminary or annual training prescribed for his arm or branch of the service, shall be liable to forfeit to His Majesty a sum of money not exceeding five pounds recoverable on complaint to a court of summary jurisdiction by the prescribed officer, and any sums recovered by such officer shall be accounted for by him in the prescribed manner.

Punishment for failure to fulfil training conditions.

**22.** If any person designedly makes away with, sells, or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or man of the Territorial Force, or wrongfully refuses or neglects to deliver up on demand anything issued to him as an officer or man of the Territorial Force, the value thereof shall be recoverable from him on complaint to a court of summary jurisdiction by the county association; and he shall also, for any such offence of designedly making away with, selling or pawning, or wrongfully destroying as aforesaid, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

Wrongful sale, &c., of public property.

*Civil Rights and Exemptions.*

Civil rights  
and exemp-  
tions.

23.—(1) The acceptance of a commission as an officer of the Territorial Force shall not vacate the seat of any member returned to serve in Parliament.

(2) An officer or man of the Territorial Force shall not be liable to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting.

(3) If a sheriff is an officer of the Territorial Force, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office in the name of the high sheriff; and the security given by the under sheriff and his pledges to the high sheriff shall stand as a security to the King and to all persons whomsoever for the due performance of the office of sheriff during such time.

(4) An officer or man of the Territorial Force shall not be compelled to serve as a peace officer or parish officer, and shall be exempt from serving on any jury, and a field officer of the Territorial Army shall not be required to serve in the office of high sheriff.

*Legal Proceedings.*

Trial of  
offences and  
application  
of penalties.

24.—(1) Any offence under this Part of this Act, and any offence under the Army Act if committed by a man of the Territorial Force when not embodied, which is cognizable by a court-martial shall also be cognizable by a court of summary jurisdiction, and on conviction by such a court shall be punishable with imprisonment for a term not exceeding three months or with a fine not exceeding twenty pounds, or with both such imprisonment and fine, but nothing in this provision shall affect the liability of a person charged with any such offence to be taken into military custody.

(2) Any offence which under this Part of this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, with this modification, that any reference in that Act to forfeiture and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(3) Any offence which under this Part of this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, in like manner as if those sections were herein re-enacted and in terms made applicable to this Part of this Act, subject to the following modification (namely)—

Every fine imposed under this Part of this Act on a man of the Territorial Force, or recovered on a prosecution instituted under this Part of this Act, shall, notwithstanding anything in any Act or charter or in the said sections to the contrary.

be paid to the association of the county for which the man was enlisted.

(4) Where a man of the Territorial Force is subject to military law and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which he was subject to military law is less than twenty-one days or has expired before the expiration of twenty-one days.

25.—(1) A person charged with an offence which under this Part of this Act is cognizable both by a court-martial and by a court of summary jurisdiction shall not be liable to be tried both by a court-martial and by a court of summary jurisdiction, but may be tried by either of them, as may be prescribed :

*Supplemental provisions as to trial of offences.*

Provided that a man who has been dealt with summarily by his commanding officer shall be deemed to have been tried by court-martial.

(2) Proceedings against an offender before either a court-martial or his commanding officer, or a court of summary jurisdiction, in respect of an offence punishable under this Part of this Act, and alleged to have been committed by him when a man of the Territorial Force, may be instituted whether the term of his service in the Territorial Force has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to his commanding officer if the alleged offender is then apprehended, or, if he is not then apprehended, then within two months after the time at which he is apprehended.

(3) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may for the purposes of any proceedings against him be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs, and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act or offences within the meaning of this Part of this Act, and to give evidence of such offences against him, and, if he has been convicted of more than one offence, to punish him accordingly as if he had been previously convicted of any such offence.

26.—(1) Section one hundred and sixty-four of the Army Act (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man of the Territorial Force who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

*Evidence.*

(2) Section one hundred and sixty-three of the Army Act (relating to evidence) shall apply to all proceedings under this Part of this Act.

*Miscellaneous.*

Exercise of powers vested in holder of military office.

27.—(1) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may, in relation to the Territorial Force, be exercised by or done by, to, or before any other person for the time being authorised in that behalf, according to the custom of the Service.

(2) Where by this Part of this Act, or by any order or regulation in force under this Part of this Act, any order is authorised to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

Application of enactments.

28.—[Subs. (1), applying the Army Act to the Territorial Force in like manner as that Act applied to the militia, virtually repealed on repeal of militia enactments by 11 & 12 Geo. V, c. 37: see now ss. 175 (3A) and 176 (6A) of Army Act.]

(2) For the purpose of section one hundred and forty-three of the Army Act and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the Territorial Force, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of the regular forces on duty.

(3) His Majesty may by Order in Council apply, with the necessary adaptations, to the Territorial Force or the officers or men belonging to that force any enactment relating to the Militia, Yeomanry, or Volunteers, or officers or men of the Militia, Yeomanry, or Volunteers, other than enactments with respect to the raising, service, pay, discipline, or government of the Militia, Yeomanry, or Volunteers, and every such Order in Council shall be laid before both Houses of Parliament<sup>1</sup>

*Transitory.*

Transitory provisions.

29.—(1) Where an association has been established under this Act for any county His Majesty may by Order in Council transfer to the Territorial Force such units of the Yeomanry and Volunteers or part thereof raised in the county as may be specified in the Order, and every such unit or part thereof shall from the date mentioned in the Order be deemed to have been lawfully formed under this Part of this Act as an unit of the Territorial Force as provided by the Order, and the provisions of this Part of this Act shall apply to it accordingly.

(2) Every officer and man of an unit or part thereof mentioned in any such Order shall, from the date mentioned in that Order, be deemed to be an officer or man of the Territorial Force. Provided that nothing in this section or in any Order made thereunder

1. The following enactments relating to the Militia and Volunteers were applied by an Order in Council dated 19th March, 1908, to the Territorial Force:—The Railway Act, 1842 (5 & 6 Vict. c. 55), s. 20; the Railway Act, 1844 (7 & 8 Vict. c. 85), s. 12; the National Defence Act, 1888 (51 & 52 Vict., c. 41), s. 52; the Friendly Societies Act, 1896 (59 & 60 Vict., c. 25), s. 43; the Officers Commissions Act, 1862 (25 & 26 Vict., c. 4); the Regulation of the Forces Act, 1871 (34 & 35 Vict., c. 86), part of s. 6.

shall, without his consent, affect the conditions or area of service of any person commissioned, enlisted, or enrolled before the passing of this Act.

(3) An Order in Council under this section may provide—

- (a) For the application to officers and men who become subject thereto of the provisions of this Act as to conditions and area of service, and for the continuance of the application to officers and men who remain subject thereto of the provisions as to conditions and area of service previously in force as respects those officers and men :
- (b) For transferring to the association any property vested in a Secretary of State for the purposes of any unit to which the Order relates :
- (c) For transferring to the association any property belonging to or held for the benefit of any such unit so however that all property so transferred shall as from the date of the transfer be held by the association for the benefit in like manner of the corresponding unit of the Territorial Force or for such other purposes as the association, with the consent of such corresponding unit, to be ascertained in the prescribed manner, shall direct ; and any question which may arise as to whether any property is transferred to an association, or as to the trusts or purposes upon or for which it is or ought to be held, shall be referred for the decision of a Secretary of State whose decision shall be final. The corresponding unit of the Territorial Force shall, in the event of any such transfer, become entitled, notwithstanding the terms of any trust, limitation, or condition affecting the property so transferred to the estate or interest in such property of the unit to the property of which the order relates ; but, subject to this provision, the interest of any beneficiary other than such unit shall not, without the consent of such beneficiary, be affected. The order may, if it be deemed proper, having regard to the special circumstances of any case, provide for the appointment of special trustees to act together with or to the exclusion of the association in regard to any such property and such special trustees may be the existing trustees of such property :
- (d) For transferring to the association any liabilities of any such unit which the association is willing to assume, and providing for the discharge of any such liabilities which are not so transferred :
- (e) For transferring to the association any land or interest in land acquired by the council of a county or borough on behalf of any volunteer corps to which the order relates, and any outstanding liabilities of the council incurred in respect thereof, if the council and the association consent :

and may contain such supplemental, consequential, and incidental provisions as may appear necessary or proper for the purposes of the Order.

(4) Every Order in Council made under this section shall be laid before both Houses of Parliament.

## PART III.—RESERVE FORCES.

Enlistment  
and terms  
of service  
of special  
reservists,  
45 & 46  
Vict. c. 48.

30.—(1) The power of enlisting men into the first class of the army reserve under the Reserve Forces Act, 1882, shall extend to the enlistment of men who have not served<sup>1</sup> in His Majesty's regular forces, and men so enlisted who have not served in the regular forces are in this Part of this Act referred to as special reservists<sup>2</sup>, and a special reservist may be re-engaged, and when re-engaged shall continue subject to the terms of service applicable to special reservists.

(2) A special reservist may, in addition to being called out for annual training, be called out for a special course or special courses of training at such place or places within the United Kingdom at such time or times and for such period or periods, not exceeding in the whole six months, as may be prescribed, in like manner and subject to the like conditions as he may be called out for annual training, and may during any such course be attached to or trained with any body of His Majesty's forces.

(3) Notwithstanding the provisions of section eleven of the Reserve Forces Act, 1882, any special reservists may be called out for annual training for such period or periods as may be prescribed by any order or regulations under the Reserve Forces Act, 1882.

(4) Provided that where one of the conditions on which a man was enlisted or re-engaged is that he shall not be called out for training, whether special or annual, for a longer period than the period specified in his attestation paper, he shall not be liable under this section to be called out for any longer period.

(5) Where a proclamation ordering the army reserve to be called out on permanent service has been issued, it shall be lawful for His Majesty at any time thereafter by proclamation to order that all special reservists shall cease to be so called out, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(6) A special reservist who enlists into the regular forces shall upon such enlistment be deemed to be discharged from the army reserve.

Agree-  
ments as to  
extension  
of service;

31. A Secretary of State may, by regulations under the Reserve Forces Act, 1882, authorise any special reservist<sup>3</sup> having the qualifications prescribed by those regulations to agree in writing that, if the time when he would otherwise be entitled to be discharged occurs whilst he is called out on permanent service, he will continue to serve until the expiration of a period, whether definite or indefinite, specified in the agreement, and, if any man who enters into such an agreement is so called out, he shall be liable to be detained in service for the period specified in his agreement in the same manner in all respects as if his term of service were still unexpired.

1. See also A.A. 92 (3), as to men discharged from the regular forces.

2. "Special reserve" and "special reservist" were altered to "militia" and "militiaman" respectively, by 11 & 12 Geo. V., c. 37, s. 2 (see p. 867).

32.—(1) A special reservist<sup>1</sup> shall, if he so agrees in writing, be liable during the whole of his service in the army reserve, or during such part of that service as he so agrees, to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in section twelve of the Reserve Forces Act, 1882, and the calling out of men under this section shall not involve the meeting of Parliament as required by section thirteen of that Act:

Liability of reservists to be called out

Provided that—

- (a) The number of men so liable shall not at any one time exceed four thousand :
  - (b) The power of calling out of men under this section shall not be exercised except when they are required for service outside the United Kingdom when warlike operations are in preparation or in progress :
  - (c) Any agreement under this section may provide for the revocation thereof by such notice in writing as may be therein stated :
  - (d) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be :
  - (e) The number of men for the time being called out under this section shall not be reckoned in the number of the forces authorised by the Annual Army Act for the time being in force.
- (2) Six thousand shall be substituted for five thousand as the maximum number of men liable to be called out under section one of the Reserve Forces and Militia Act, 1898, and the liability to be called out under that section may, if so agreed, extend to the first two years of a man's service in the first class of the army reserve.

61 & 62 Vict. c. 9.

(3) [Repealed.]

33. Orders and regulations under the Reserve Forces Act, 1882, may provide for the formation of special reservists<sup>1</sup> into regiments, battalions, or other military bodies . . . and for appointing, transferring, or attaching special reservists to . . . corps, and for posting, attaching, or otherwise dealing with special reservists within . . . corps.

Power to form battalions, &c., of reservists.

34.—[Repealed.]

35. Subsection (4) of section six of the Reserve Forces Act, 1882, which makes a certificate purporting to be signed by an officer appointed to pay men belonging to the army reserve evidence in certain cases, shall, where a person other than an officer is appointed to pay men belonging to the army reserve, apply to certificates purporting to be signed by such person.

Amendment of 45 & 46 Vict. c. 48, s. 6 (4).

36. The acceptance of a commission as an officer in the reserve of officers shall not vacate the seat of any member returned to serve in Parliament.

Commissions in reserve of officers not to vacate seat in Parliament.

1. "Special reserve" and "special reservist" were altered to "militia" and "militiaman" respectively, by 11 & 12 Geo. V., c. 37, s. 2 (see p. 867).

## PART IV.—SUPPLEMENTAL.

Provisions  
as to orders,  
schemes,  
and regula-  
tions.

**37.—**(1) Every Order in Council or scheme required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session; and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days, praying that any such order or scheme may be annulled, His Majesty may thereupon by Order in Council annul the same, and the order or scheme so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

(2) All Orders in Council, orders, schemes, and regulations made under this Act may be varied or revoked by subsequent Orders in Council, orders, schemes, and regulations made in the like manner and subject to the like conditions.

Definitions

**38.** In this Act, unless the context otherwise requires,—

The expression "county" means a county or riding of a county for which a lieutenant is appointed, and includes the City of London; and each county of a city or county of a town mentioned in the first column of the Second Schedule to this Act shall be deemed to form part of the county set opposite thereto in the second column of that schedule;

The expression "man of the Territorial Force" includes a non-commissioned officer;

The expression "prescribed" means prescribed by orders or regulations;

Other expressions have the same meaning as in the Army Act.

Special provisions as to special places.

**39.—**(1) The Lord Warden of the Cinque Ports may ex-officio be a member of the association of the county of Kent or of the county of Sussex, or of both, as may be provided by schemes under this Act.

(2) The Warden of the Stannaries may ex-officio be a member of the association of the county of Cornwall or of the county of Devon, or of both, as may be provided by schemes under this Act.

(3) The Lord Mayor of the City of London shall ex-officio be president of the association of the City of London.

(4) The Governor or Deputy Governor of the Isle of Wight shall ex-officio be a member of the association of the county of Southampton.

(5) Nothing in this Act shall affect the raising and levying of the Trophy Tax as heretofore in the City of London, but the proceeds of the Tax so levied may be applied by His Majesty's Commissioners of Lieutenancy for the City of London, if the Royal London Militia Battalion is re-constituted as a battalion of the Army Reserve, for any purposes connected with that battalion, and may also, if His Majesty's Commissioners of Lieutenancy for the City of London in their discretion see fit, be applied for the purposes of any of the powers and duties of the association of the City of London under this Act.



**40.**—(1) In the application of this Act to Scotland the following modifications shall be made :—

*Application to Scotland and the Isle of Man.*

- (a) This Act shall apply to a county of a city in like manner as to any other county : Provided that on the representation or with the consent of the corporation of any county of a city it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, at any time after the passing of this Act, to declare that such county of a city shall for the purposes of this Act be deemed to form part of the county set opposite thereto in the second column of the Third Schedule to this Act, and to provide for all matters which may appear necessary or proper for giving full effect to the order ;
  - (b) The expression " county borough council " means the town council of a royal, parliamentary, or police burgh with a population of or exceeding twenty thousand according to the census for the time being last taken ;
  - (c) The expression " land " includes heritages ;
  - (d) The expression " overseer " means an inspector of poor.
- (2) This Act shall apply to the Isle of Man as if it formed part of, and were included in the expression, the United Kingdom, subject to the following modifications :—
- (a) The Isle of Man shall be deemed to be a separate county ;
  - (b) References to the Governor of the Island shall be substituted for references to the lieutenant of a county ;
  - (c) References to a High Bailiff or two justices of the peace and to conviction by such a Bailiff or justices shall be substituted for references to a court of summary jurisdiction and to conviction under the Summary Jurisdiction Acts ;
  - (d) References to the Tynwald Court shall be substituted for references to Parliament in the section of this Act relating to civil rights and exemptions.

**41.** This Act may be cited as the Territorial and Reserve Forces Act, 1907, and so far as it relates to the reserve forces may be cited with the Reserve Forces Acts, 1882 to 1906, as the Reserve Forces Acts, 1882 to 1907.

*Short title.*

## SCHEDULES.

### FIRST SCHEDULE.

[The schedule specified in Section 28 (1) now virtually repealed.] *Section 28.*

## Section 38.

## SECOND SCHEDULE.

Names of Cities and Towns.	County.
ENGLAND	
County of the city of Chester .. .. .	Chester.
County of the city of Exeter .. .. .	Devon.
County of the town of Poole .. .. .	Dorset.
County of the city of Gloucester .. .. .	Gloucester.
County of the city of Bristol .. .. .	Gloucester.
County of the city of Canterbury .. .. .	Kent.
County of the city of Lincoln .. .. .	Lincoln.
County of the city of Norwich .. .. .	Norfolk.
County of the town of Newcastle-upon-Tyne .. .. .	Northumberland.
Borough and town of Berwick-upon-Tweed .. .. .	Northumberland.
County of the town of Nottingham .. .. .	Nottingham.
County of the town of Southampton .. .. .	Southampton.
County of the city of Lichfield .. .. .	Stafford.
County of the city of Worcester .. .. .	Worcester.
County of the city of York .. .. .	West Riding of York.
County of the town of Kingston-upon-Hull .. .. .	East Riding of York.
County of the town of Carmarthen .. .. .	Carmarthen.
County of the town of Haverfordwest .. .. .	Pembroke.
IRELAND.	
County of the city of Waterford .. .. .	Waterford.
County of the town of Londonderry .. .. .	Londonderry

## Section 40.

## THIRD SCHEDULE.

## SCOTLAND.

Name of County of City.	County.
County of the city of Edinburgh .. .. .	Edinburgh.
County of the city of Glasgow .. .. .	Lanark.
County of the city of Dundee .. .. .	Forfar.
County of the city of Aberdeen .. .. .	Aberdeen.

## Territorial Army and Militia Act, 1921.

[11 &amp; 12 Geo. 5, c. 37.]

*An Act to provide for the application of new designations to the Territorial Force and the Special Reserve, and to repeal enactments relating to the Militia and Yeomanry; and for purposes in connection therewith.* [17th August, 1921.]

1. The territorial force which His Majesty is empowered to raise and maintain under Part II of the Territorial and Reserve Forces Act, 1907, shall be called the territorial army, and accordingly that Act and any other enactment, Royal warrant, proclamation, order, regulation, or document applying to the territorial force shall have effect as though references therein to the territorial army were substituted for references to the territorial force.

*New designation for the territorial force.*  
7 Edw. 7. c. 9.

2. That portion of the army reserve which has hitherto been known as "the special reserve" shall be called "the militia," and accordingly sections thirty to thirty-three of the Territorial and Reserve Forces Act, 1907, and any other enactment, Royal warrant, proclamation, order, regulation, or document applying to the special reserve shall have effect as though references therein to the militia were substituted for references therein to the special reserve, and as though references therein to a militiaman and to militiamen were substituted for references therein to a special reservist and to special reservists.

*New designation for the special reserve.*

3. The sections of the Army Act specified in the First Schedule to this Act shall be amended in the manner shown in the second column of that schedule.<sup>1</sup>

*Amendments of the Army Act.*

4.—(1) The power to raise and maintain a militia force or a yeomanry force under any of the enactments set out in the Second Schedule to this Act shall cease, and those enactments shall be repealed to the extent specified in the third column of that schedule.<sup>2</sup>

*Abolition of existing militia and yeomanry.*

Provided that, notwithstanding anything in this section, any enactment repealed by this Act which relates to militia storehouses shall continue to apply in relation to militia storehouses provided before the commencement of this Act, as though this Act had not been passed.

(2) In this section the expression "militia storehouses" means any buildings or premises provided for the purpose of keeping therein the arms, accoutrements, clothing, and other stores belonging to any regiment, battalion or corps of militia, when not embodied.

\* \* \* \* \*

1. These amendments are incorporated in the Army Act as printed in Part II of this Manual.

2. The enactments mentioned were the old Militia Acts and Yeomanry Acts.

**Auxiliary Air Force and Air Force Reserve Act, 1924.**

[14 &amp; 15 Geo. 5, c. 15.]

**Extract from**

*An Act to make further provision as to the organisation and conditions of service of the Auxiliary Air Force and Air Force Reserve, and for purposes connected therewith.*

[14th July, 1924.]

Constitution  
of county  
joint asso-  
ciations and  
auxiliary  
air force  
associations.  
7 & 8 Geo. 5,  
c. 51.  
7 Edw. 7,  
c. 8.

1. The power of His Majesty under section six of the Air Force (Constitution) Act, 1917 (in this Act referred to as "the principal Act"), to apply by Order in Council to the auxiliary air force or to the officers and men of that force any of the enactments relating to the territorial army or the officers and men of that army, shall be extended so as to include power to apply Part I of the Territorial and Reserve Forces Act, 1907, to the auxiliary air force and to the officers and men of that force and also to the territorial army and to the officers and men of that army with such modifications as may be necessary—

- (1)—(a) to provide for the establishment and constitution of a county joint association under the said Part I, which shall, as respects the county, exercise the powers and perform the duties of an association under the said Part in relation both to the territorial army and to the auxiliary air force, and to provide for the application of the provisions of that Part with respect to the Army Council, to army services and to the territorial army, to the Army Council and Air Council or either of them, to army and air force services or either of them and to the territorial army and the auxiliary air force, or either of them, respectively;
- (b) to define the relations and responsibilities of any such county joint association to the Army Council and the Air Council respectively; and
- (2) to provide for the establishment and constitution for any areas which in the opinion of the Air Council cannot suitably be administered through county joint associations constituted under the preceding paragraph, of auxiliary air force associations; and
- (3) to provide for the termination of county joint associations either generally or in special cases, and on such termination for the establishment of associations constituted under the Territorial and Reserve Forces Act, 1907, or of auxiliary air force associations; and
- (4) to provide for the transfer and adjustment of any powers, duties, assets and liabilities on the establishment or termination of county joint associations.

\* \* \* \* \*

Power to  
make supple-  
mental modi-  
fications.

4. An Order in Council made in pursuance of any of the foregoing provisions of this Act may make such supplemental and consequential modifications (if any) of the provisions of the Reserve Forces Acts, 1882 to 1907, and the Territorial and Reserve

Forces Act, 1907, including the provisions as to the service and publication of notices, and contain such supplemental and consequential provisions, as may appear to His Majesty in Council to be necessary or expedient.

\* \* \* \* \*

6.—(1) This Act may be cited as the Auxiliary Air Force and Air Force Reserve Act, 1924.

Short title, savings, and interpretation.

\* \* \* \* \*

(4) In this Act—

\* \* \* \* \*

(ii) references to the Reserve Forces Act, 1882, and to the Territorial and Reserve Forces Act, 1907, shall be construed as references to those Acts as amended by any subsequent enactment.

45 & 46 Vict. c. 42.

\* \* \* \* \*

# The Officers' Commissions Act, 1862.<sup>1</sup>

[25 & 26 Vict., c. 4.]

*An Act to enable Her Majesty to issue commissions to the officers of Her Majesty's Land Forces and Marines . . . without affixing Her Royal Sign Manual thereto.*

[11th April, 1862]

1: It shall be lawful for Her Majesty, by Order in Council, from time to time, as occasion may require, to direct that all or any commissions for officers prepared or to be prepared under the authority of Her Majesty's Royal Sign Manual may be afterwards issued without Her Royal Sign Manual, but having thereon, in the case of Her Majesty's land forces,<sup>2</sup> except as hereinafter mentioned, the signatures of the commander-in-chief or the general commanding-in-chief, and of one of Her Majesty's Principal Secretaries of State, and in the case of the Royal Marines, of the Lords Commissioners of the Admiralty, and in the case of military chaplains, commissariat and store officers, and of adjutants and quartermasters in the . . . volunteer forces, of one of Her Majesty's said Principal Secretaries; and every such commission issued and signed in pursuance of such Order in Council shall be conclusive evidence that the officer named in any such commission has been appointed or promoted by Her Majesty to the rank or office named therein.

Officers' commissions in the army, &c., may be issued without Her Majesty's Royal Sign Manual being affixed thereto.

2. Nothing herein contained shall be construed to prevent Her Majesty from signing any commission, or to prevent any commission so signed from having the same validity and effect as if this Act had not passed.

Act not to affect Her Majesty's right to sign commissions.

1. This Act has been applied to the Territorial Army by O. in C. dated 19th March, 1908.  
2. By s. 6 of the Regulation of the Forces Act, 1871, as applied to the Territorial Army by the T. R. F. Act, 1907, and Order in Council of 19th March, 1908, the preparation, authentication, and issue of commissions in the Territorial Army are governed by the same rules as the preparation, authentication and issue of commissions in the land forces.

## The Local Government Act, 1888.

[51 &amp; 52 Vict., c. 41.]

Extract from

*An Act to amend the Laws relating to Local Government in England and Wales and for other purposes connected therewith.*

[19th August, 1888]

Supple-  
mental  
provision as  
to altera-  
tion of area;

59.—(1) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.

(2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned form part of that county for all purposes, whether sheriff, lieutenant, custos rotulorum, justices, . . . . .<sup>1</sup> coroner, or other :

Provided that—

(a) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and

(b) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, . . . . .<sup>1</sup> justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and

(c) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(3) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place.

(4) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(a) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and

1. This section has been applied to Territorial Army by O. in C., dated 16th March, 1908.

duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

- (b) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and
- (c) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and
- (d) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and
- (e) May adjust any property, debts, and liabilities affected by the scheme or order.

(5) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board<sup>1</sup> desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

(6) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act.

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1. Powers of L.G.B. transferred to Ministry of Health by 9 & 10 Geo. V., c. 21, s. 3 (1) (a).

## Regimental Debts Act, 1893.

[56 Vict., c. 5.]

*An Act to consolidate and amend the Law relating to the Payment of Regimental Debts, and the Collection and Disposal of the Effects of Officers and Soldiers in case of Death, Desertion, Insanity, and other cases.* [29th April, 1893.]

*Collection of Effects and Payment of Preferential Charges.*

On death of person subject to military law, committee of adjustment to secure effects and pay charges.

1. On the death of a person while subject to military law the prescribed committee of adjustment shall, as soon as may be, in accordance with the prescribed regulations<sup>1</sup> and subject to any exceptions made thereby,

- (1) secure and make an inventory of all such of the effects of the deceased as are in camp or quarters, and, if the death occurs out of the United Kingdom, are within the prescribed area whether station, colony, or command, or other, (which area is in this Act referred to as the regulation area); and
- (2) ascertain the amount and provide for the payment of the preferential charges on the property of the deceased.

Preferential charges.

2. The following shall be the preferential charges on the property of a person dying while subject to military law, and shall, except so far as other provision may be made for them or any of them, be payable in preference to all other debts and liabilities, and, as among themselves, in the following order:—

- (1) Expenses of last illness and funeral;
- (2) Military debts, namely, sums due in respect of, or of any advance in respect of—
  - (a) Quarters;
  - (b) Mess, band, and other regimental accounts;
  - (c) Military clothing, appointments and equipments, not exceeding a sum equal to six months' pay of the deceased, and having become due within eighteen months before his death;

to which shall be added, where the death occurs out of the United Kingdom,—

- (3) Servants' wages, not exceeding two months' wages to each servant; and
- (4) Household expenses incurred within a month before the death, or after the last issue of pay to the deceased, whichever is the shorter period

Surplus only of personal estate to be deemed personal estate.

3. So much only of the personal property of a person dying while subject to military law as remains after payment of the preferential charges shall be considered personal estate of the deceased with reference to the calculation of probate duty, or of any other duty, tax, or percentage, or for any of the purposes of administration.

1. See p. 881, *sup.*



4. If in any case a doubt or difference arises in relation to any preferential charge or the payment thereof, the decision of the Secretary of State, or of such officer or person as the Secretary of State deposes by writing to act in this behalf, shall be final, and shall be binding on all persons for all purposes.

Decision of questions as to preferential charges.

5. Subject to the prescribed regulations, if any person pays or secures the payment of the preferential charges in full, the committee of adjustment shall not further interfere in relation to the property, except so far as they may be requested so to do by or on behalf of that person.

Payment of preferential charges by representatives of other persons.

6.—(1) If within one month after the death or such further time not exceeding the prescribed time as the committee of adjustment allow, the preferential charges are not paid or secured to their satisfaction, the committee shall proceed to pay those charges.

Powers and duties of committee where preferential charges are not paid.

(2) If the death occurs out of the United Kingdom, the committee of adjustment, save as may be prescribed, shall, if it appears to them necessary for the payment of the preferential charges, and in any case may, collect all the personal property of the deceased in the regulation area.

(3) The committee, save as may be prescribed, shall, for the purpose of paying the preferential charges and their expenses, and in any case may, at such time as, subject to the prescribed regulations, they think expedient, sell and convert into money such of the personal property of the deceased as does not consist of money.

(4) If the death occurs out of the United Kingdom they may also, save as otherwise prescribed, pay all debts which appear to them to be legally payable out of the personal estate of the deceased.

(5) For the purpose of the exercise of their duties the committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if they had taken out representation to the deceased, and also if in a colony the powers which any official administrator has by the law of that colony; and any receipt given by the committee shall have the like effect as if it had been given by the legal personal representative of the deceased.

(6) The committee of adjustment shall lodge the surplus remaining in their hands after payment of the said charges and expenses and debts with such person (in this Act referred to as the paymaster), at such times, in such manner, and together with such inventory, accounts, vouchers, and information, as may be prescribed.

#### *Disposal of Surplus and Residue.*

7. The paymaster shall pay the surplus in the prescribed manner, and subject to the prescribed provisions and exceptions, as follows:—

Disposal of surplus by paymaster.

(1) If out of the United Kingdom he may pay thereout any expenses which under the prescribed regulations are chargeable against the surplus, and any debts which are legally payable out of the personal estate of the deceased;

(2) If he knows of a representative of the deceased in the same part of Her Majesty's dominions, he shall pay the surplus to that representative;

- (3) If he does not know of such a representative as above mentioned, and the amount does not exceed one hundred pounds, he may pay or apply all or any part thereof to or for the benefit of such persons in the same part of Her Majesty's dominions as he knows of and appear to be beneficially entitled to the personal estate of the deceased, or to or for the benefit of any of such persons ;
- (4) He shall remit the surplus or so much thereof as is not paid or applied in pursuance of this section to the Secretary of State.

Disposal of  
residue by  
Secretary of  
State.

8. The Secretary of State, on being informed of the death of a person subject to military law, shall proceed with all reasonable speed as follows :—

- (1) He shall cause to be ascertained the total amount to the credit of the deceased, including any surplus or part of a surplus remitted by a paymaster as mentioned in this Act, and all arrears of pay, batta grants, and other allowances in the nature thereof ; which total amount so ascertained is in this Act referred to as the residue ,
- (2) If he has notice of a representative of the deceased, he shall pay the residue to that representative ;
- (3) He may, and if it is so prescribed shall, before such payment, publish the prescribed notice stating the amount of the residue and such other particulars respecting the deceased and his property as may seem fit, and also the mode in which any application respecting the residue is to be made to the Secretary of State. Provided that the Secretary of State may pay out of any money in his hands to the credit of the deceased any preferential charges appearing to him to have been left unpaid by the committee of adjustment.

Disposal by  
Secretary of  
State of  
residue  
where  
residue does  
not exceed  
one hundred  
pounds, and  
no represen-  
tation.

9. Where the residue does not exceed one hundred pounds, the Secretary of State may, if he thinks fit, require representation to be taken out ; but if he does not, and has no notice of a representative of the deceased, then, after the expiration of the prescribed time and the publication of the prescribed notice (if any), the residue shall be disposed of as follows :—

- (1) The Secretary of State may, if he thinks fit, pay or apply the residue or any part thereof, in accordance with the prescribed regulations to or for the benefit of any of the persons appearing to be beneficially entitled to the personal estate of the deceased, or any of them, and may for that purpose invest the same by deposit in a military or other savings bank or otherwise, and, if necessary, in the name or names of a trustee or trustees for any such person.
- (2) Any part thereof remaining in the hands of the Secretary of State, and not irrevocably appropriated, shall be applied in paying any debt of the deceased which—
- (a) accrued due within three years before the death ; and
- (b) is claimed from the Secretary of State within two years after the death ; and

(c) is proved by the claimant to the satisfaction of the Secretary of State.

(3) Except as above in this section provided, a person shall not be entitled to obtain payment out of any residue in the hands of the Secretary of State of any sum due from the deceased.

**10.—**(1) Where any residue or any part thereof remains undisposed of and unappropriated, the prescribed notice thereof shall be published, and during six years next after the publication of that notice the like notice with any necessary modifications shall be annually published. Application of residue undisposed of.

(2) So much of the residue as remains undisposed of and unappropriated for six months after the publication of the last of such notices shall, together with any income or accumulations of income accrued therefrom, be applied in the prescribed manner in or towards the creation or maintenance of such compassionate or other fund for the benefit of widows and children, or other near relatives, of soldiers dying on service, or within six months after discharge, as may be prescribed.

(3) Provided that the application under this section of any residue, or part of a residue, shall not bar any claim of any person to the same, or any part thereof.

*Supplemental Provisions.*

**11.** Medals and decorations shall not be considered to be comprised in the personal estate of the deceased with reference to the claims of creditors or for any of the purposes of administration under this Act or otherwise; and, notwithstanding anything in this or any other Act, the same, when secured by the committee of adjustment, shall be held and disposed of according to regulations laid down by royal warrant. Disposal of medals and decorations.

**12.** Where any part of the personal estate of the deceased consists of effects, securities, or other property not converted into money, the provisions of this Act with respect to paying or remitting the surplus shall, save as may be prescribed, extend to the delivery, transmission, or transfer of such effects, securities, or property, and the paymaster and Secretary of State shall respectively have the same power of converting the same into money as the representative of the deceased. Disposal of effects not money.

**13.—**(1) Her Majesty the Queen may, by warrant under the Royal Sign Manual, make regulations for all such things as are by this Act directed or authorised to be prescribed or made subject to regulations, and also such regulations as may seem fit for the better execution of this Act, or any part thereof; and may by such regulations make different provisions to meet different cases or different circumstances. Regulations by royal warrant.

(2) Every royal warrant made under this Act shall be printed by the Queen's printer, and published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament as soon as may be after the making thereof.

Restriction  
on interpo-  
sition of  
official ad-  
ministrators.

14.—(1) An official administrator, notwithstanding any law regulating his office independently of this Act, shall not interpose in any manner in relation to any property of a person dying while subject to military law, except in the prescribed cases, or except when and so far as he is expressly required to do so by a committee of adjustment, or paymaster, or Secretary of State.

(2) The committee of adjustment in such cases, under such circumstances, and at such times as may be prescribed, may request an official administrator, to exercise his official powers either on behalf of the committee or otherwise, and the administrator shall comply with the request. The committee may also lodge any property secured or collected by them with any official administrator.

(3) Where under this Act any property comes to the hands of any official administrator, he shall administer the same as regards preferential charges and otherwise in accordance with this Act, and, subject thereto, according to the law regulating his office independently of this Act.

(4) The official administrator shall remit any surplus remaining in his hands after discharge of all debts and his charges to the Secretary of State at such time and in such manner as may be prescribed, to be disposed of according to the provisions of this Act as if remitted by a paymaster.

(5) An official administrator shall not take a percentage on the property exceeding three per cent. on the gross amount coming to or remaining in his hands after payment of preferential charges.

Money re-  
mitted not  
to be assets  
in place  
where  
remitted to.

15. Any property coming under this Act to the hands of any committee of adjustment or paymaster shall not, by reason of so coming, be deemed assets or effects at the place in which that committee or paymaster is stationed or resides, and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

Duty and  
representa-  
tion where  
sums under  
one hundred  
pounds.

16. Where any surplus or residue, as the case may be, does not exceed one hundred pounds, no duty shall be payable in the United Kingdom or India in respect thereof, and it shall not be necessary that representation to any deceased person be taken out for the purpose of obtaining payment thereof or of any part thereof under this Act from a paymaster or a Secretary of State, except in any prescribed case, or in any case where the Secretary of State requires it.

Discharge  
of pay-  
master and  
Secretary of  
State.

17. Compliance with the regulations under this Act with respect to the mode of payment of any surplus or residue or any part thereof to any person (whether by transmission or remission to another place or person or otherwise) shall discharge the Secretary of State or paymaster or other person complying with the regulations, and he shall not be liable by reason of the surplus or residue or part which may be in his hands having been paid, transmitted, remitted, or otherwise dealt with in accordance with the regulations.

Validity of  
payments,  
sales, &c.,  
under this  
Act.

18. Every payment, application, sale, or other disposition of property made by the Secretary of State, or by any committee of adjustment, or by any paymaster, when acting in execution or supposed execution of this Act, or of any royal warrant for carrying this Act into effect, shall be valid as against all persons whom-

soever; and the Secretary of State, and every officer belonging to any such committee, and every such paymaster as aforesaid shall, by virtue of this Act, be absolutely discharged from all liability in respect of the property so paid, applied, sold, or disposed of.

19. After the committee of adjustment have lodged with the paymaster the surplus of the property of any deceased person, any representative of that person and any official administrator shall, as regards any property of a deceased person not collected by the committee of adjustment and not forming part of the surplus or residue in this Act mentioned, have the same rights and duties as if this Act had not passed.

*Saving for rights of representative.*

20. A creditor, as such, shall not be deemed a person entitled to take out representation to the deceased within the meaning of this Act or to pay or secure the preferential charges; nor shall a creditor taking out representation be entitled as representative of the deceased to claim from a paymaster or the Secretary of State any part of the property of the deceased.

*Creditor administering not entitled to claim property.*

21.—(1) Where any original will of a person dying while subject to military law, whether he died before or after the commencement of this Act, comes to the hands of a Secretary of State, and representation under the same is not taken out, then the Secretary of State may cause the same to be deposited as follows:—

*Deposit in court of registry, &c., of original wills in hands of Secretary of State, and declaration of intestacy.*

(a) Where the domicile of the testator appears to the Secretary of State to have been in Scotland, then in the office of the commissary clerk of the commissary court of the county of Edinburgh:

(b) Where the domicile of the testator appears to the Secretary of State to have been in Ireland,<sup>1</sup> then in the place for the time being appointed in Dublin<sup>2</sup> for the deposit of original wills brought into the High Court in Ireland.<sup>3</sup>

(c) In any other case, in the place for the time being appointed in London for the deposit of original wills brought into the High Court in England.

(2) Where a person dies while subject to military law intestate, and under this Act any residue of his property comes to the hands of the Secretary of State, and representation to the deceased is not taken out, then the Secretary of State may, if it seems fit, cause a declaration of his intestacy to be deposited in the place or office where his original will (if any) would be deposited as aforesaid.

(3) In every such case the Secretary of State may cause to be deposited, together with the original will or declaration of intestacy an inventory showing the personal property of the deceased, and the application thereof, as far as the same is known.

(4) Every such original will, declaration of intestacy, and inventory shall be preserved and dealt with, and may be inspected, subject and according to the same rules or orders and on payment of the same fees as any other like documents deposited in that office or place, or subject and according to such other rules or orders

1. In its application to Northern Ireland, the reference to Ireland is to be construed as Northern Ireland. See S.R. & O., 1922 (No. 123).

2. In application to N. Ireland "Belfast" (see note 1).

3. In application to N. Ireland, "High Court of Justice in Northern Ireland" (see note 1).

and on payment of such other fees, as may be made or fixed in that behalf by the court, judge, or other authority empowered to make rules or orders in relation to other documents deposited in the same place or office.<sup>1</sup>

*Application of Act to special Cases.*

Special provisions as to an army paymaster.

22. In the application of this Act to an army paymaster, the following modifications shall be made :—

- (1) The powers and duties of the committee of adjustment shall arise immediately on his death, and shall continue notwithstanding that the professional<sup>2</sup> charges are paid or secured :
- (2) Money in the possession or under the control of an army paymaster at his death shall not be considered to be comprised in his effects for the purposes of this Act :
- (3) The surplus in the hands of the committee of adjustment and the residue in the hands of a Secretary of State shall be dealt with and disposed of as may be prescribed and not according to the foregoing provisions of this Act.

Application of Act to deserters, felons, &c.

23. Where a person subject to military law deserts, or is absent without leave for twenty-one days, or is convicted by a civil court of any offence which by the law of England is felony, or is delivered up as an apprentice, whether in pursuance of an order of a court, or otherwise, the provisions of this Act shall apply as if the person were dead, subject to the following modifications :—

- (1) The powers of the committee of adjustment shall arise and continue notwithstanding that the preferential charges are paid or secured :
- (2) The committee of adjustment shall dispose of the surplus in the prescribed manner, and the same when so disposed of shall be free from all claim on the part of the said person or any one claiming through him.

Application of Act to case of insanity.

24. Where a person subject to military law is ascertained in the prescribed manner to be insane, the provisions of this Act shall apply as if he had died at the time of his insanity being so ascertained, subject nevertheless to the prescribed exceptions, and to the following modifications :

- (a) The preferential charges may be paid by the wife of the insane person, or by any person who, subject to the prescribed regulations, appears to be a relative of or person undertaking the care of the insane person or of his property :
- (b) The committee of adjustment shall dispose of the surplus in the prescribed manner with a view to its being applied for the benefit of the insane person.

*Application of Act to India.*

General application of Act to India.

25. This Act shall apply to India as if it were a colony, subject to the modifications in this Act mentioned, and to this exception, that it shall not, save so far as may be prescribed, apply to any native of India within the meaning of Indian military law.

1. See also the Regimental Debts (Deposit of Wills) (Scotland) Act, 1919 (9 & 10 Geo. V. c. 89).

2. *Id.*: presumably "preferential" was intended.

26. In the case of the death of a person who dies while in India or while on service with any force under the command of the commander-in-chief in India, or of any provincial commander-in-chief in India, and who is not a soldier of Her Majesty's regular forces, this Act shall apply with the following modifications :—

*Provision where death occurs in India, the deceased not being a soldier.*

- (1) The paymaster shall after the prescribed notice pay all debts of which he has notice within the prescribed time, and which appear to him to be lawfully payable out of the estate of the deceased. Provided that if under the special circumstances of the case of the deceased it appears to the paymaster inexpedient or unjust to pay any claims out of the estate, or if the claims lodged exceed in the whole the prescribed amount, the paymaster shall, without discharging those claims, or any of them, transfer the surplus aforesaid to the official administrator :
- (2) Where the paymaster does not so transfer the surplus, he shall dispose thereof, or of so much thereof as remains after the discharge of any claims, in manner directed by this Act :
- (3) The foregoing provisions of this section shall not apply to an army paymaster :
- (4) The secretary to the Government of India in the military department shall have the same power as the Secretary of State to decide any doubt or difference as to preferential charges, and his decision shall have the same effect as if it were given by the Secretary of State.

27. Nothing in this Act shall prevent the Secretary of State from deducting in the pay office from any arrears of pay due to the deceased the amount of any arrears of subscription due by the deceased to the Indian military and orphan funds, or either of them.

*Deduction of arrears of subscription to military and orphan funds.*

28. Anything authorised or required by this Act to be done by, to, or before a Secretary of State may, in the prescribed cases, be done by, to, or before the Secretary of State in Council of India.

*Provision as to Secretary of State for India.*

*Definitions ; Extent ; Commencement ; Repeal ; Short Title.*

29. In this Act, unless the context otherwise requires,—

*Definitions.*

The expression " officer " includes a warrant officer, although not holding an honorary commission :

The expression " representation " includes probate and letters of administration, with or without will annexed, and in Scotland confirmation, and in India or a colony the corresponding documents in use according to the law of India or the colony :

The expression " representative " means any person taking out representation, but does not include an official administrator :

The expression " official administrator " means in India the administrator-general of any presidency or province, and in a colony means any public officer who has by law any powers or duties in relation to the collection or distribution of the estate of any deceased person :

The expression "prescribed" means prescribed by Royal Warrant.

Save as aforesaid expressions in this Act have the same meaning as in the Army Act.

Extent of  
Act.

30.—(1) This Act shall apply to all persons subject to military law, whether within or without Her Majesty's dominions.

(2) This Act shall be registered by the Royal Courts of the Channel Islands, and shall apply to those Islands and to the Isle of Man as if they were parts of the United Kingdom.

53 & 54  
Vict. c. 37.

(3) This Act shall apply to a place in which Her Majesty exercises jurisdiction under the Foreign Jurisdiction Act, 1890, as if that place were a colony.

\* \* \* \* \*

### Regimental Debts (Deposit of Wills) (Scotland) Act, 1919.

[9 & 10 Geo. 5, c. 89.]

*An Act to make provision with regard to wills deposited under section twenty-one of the Regimental Debts Act, 1893, with the Commissary Clerk of the County of Edinburgh, and required for the purpose of confirmation as executor or of completing a title to heritable estate in Scotland.* [23rd December, 1919.]

86 & 57  
Vict. c. 5.

1.—(1) Where the will of any person has been or shall hereafter be deposited, under section twenty-one of the Regimental Debts Act, 1893, in the office of the Commissary Clerk of the Commissary Court of the county of Edinburgh, and an application for delivery of such will is presented to the Commissary Clerk either by a sheriff clerk stating that the same is required for the purpose of the confirmation of an executor of such person, or by a law-agent (within the meaning of the Law Agents (Scotland) Act, 1873), who shall send with his application a declaration signed by himself that the will is required on behalf of a client therein named, and designed for the purpose of completing a title to heritable estate in Scotland, the Commissary Clerk shall, notwithstanding anything contained in the said section, deliver the said will to such sheriff clerk or to such law-agent, as the case may be, on receiving a receipt therefor from such sheriff clerk or law-agent, which receipt shall be preserved and dealt with by the Commissary Clerk in like manner as a will deposited in pursuance of the said section.

86 & 57  
Vict. c. 53.

(2) The power of the Court of Session under subsection (4) of the said section to make rules or orders and to fix fees, shall include power to make rules or orders and to fix fees with regard to the delivery of wills by the Commissary Clerk and to the receipts granted therefor in pursuance of the foregoing subsection.

\* \* \* \* \*



**Royal Warrant—Regulations under the Regimental Debts Act, 1893.**

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**VICTORIA R.I.**

WHEREAS by Our Warrant of 22nd April, 1881, We were pleased to make the Regulations thereunto annexed, being regulations under the Regimental Debts Act, 1863; and Whereas by the Regimental Debts Act, 1893, which will come into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed; and Whereas We deem it expedient to make Regulations under the Regimental Debts Act, 1893, to take effect as from the 1st October, 1893, in lieu of the Regulations annexed to Our said Warrant of the 22nd April, 1881;

OUR WILL AND PLEASURE is that our said Warrant of 22nd April, 1881, and the Regulations thereunto annexed, shall be and are hereby cancelled as from the 1st October, 1893, and this Our Warrant and Regulations which shall be administered, construed, and interpreted by Our Secretary of State for War, and Our Secretary of State in Council of India, as the case may require, shall, on and after the 1st October, 1893, subject to and in conjunction with the Regimental Debts Act, 1893, be the sole outstanding authority on the matters therein treated of;

PROVIDED ALWAYS that where and so far as the Regimental Debts Act, 1893, the Army Act, or this Our Warrant and the Regulations thereunto annexed do not particularly prescribe the manner in which any sum of money is to be disposed of or invested, then and in every such case, until by further Warrant under Our Royal Sign Manual we otherwise direct, the same shall be disposed of or invested as the same would have been disposed of or invested if the Acts above quoted had not been passed.

Given at Our Court at Balmoral, this 30th day of August, 1893, in the 57th year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

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**REGULATIONS.**

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(Section 1 of the Act.)

1. The committee of adjustment will consist of three officers. When practicable, the president should not be below the rank of captain, or, if the deceased was an officer, below that of major.
2. The committee will be appointed by the following officers :—
  - If the deceased was serving with his unit, by the commanding officer.
  - If the death occurred at sea, by the officer commanding the troops on board ship.
  - In all other cases, except as provided in paragraph 5 (b) by the officer in immediate command.

3. If the death occurs at sea, and a committee cannot be assembled on board ship, it will be assembled as soon as possible after the ship reaches its destination. If the port of disembarkation is a military station, the committee will be assembled by the officer in immediate command; if it is not a military station, by the general officer in whose command the port is situated.

4. If the officer authorised by paragraphs 2 or 3 to appoint a committee is, from any reason, unable to do so, he will apply to superior authority.

5. In cases where the deceased died while temporarily absent from the country in which he was stationed, then—

- (a) If the death occurred out of the United Kingdom a local committee of adjustment may also be appointed by the officer in command of the unit or station from which the deceased was temporarily absent to deal with his affairs in that country; and
- (b) If the death occurred in the United Kingdom one committee only shall be assembled, which shall be appointed by the officer who would have appointed the committee had the deceased not been so temporarily absent.

5A. Where the deceased was an officer in receipt of regimental or other pay issued in advance, the committee of adjustment will ascertain from the agent or paymaster who issued the pay whether any sum is due to the public in respect of any issue beyond the date of the officer's death, and will, before paying any private bills or handing over any sum to the next of kin or legal representative, provide for the refund of any such over-issue of pay out of the assets in the hands of the committee.

6. The committee of adjustment will in all cases, except as provided in paragraph 8, as soon as practicable after the death, make an inventory of the property, and an account of the debts and credits of the deceased.

7. The inventory and account will be prepared in duplicate, on the forms supplied, and both the original and the duplicate will be certified by the committee of adjustment.

The original will be dealt with as hereafter directed in these regulations.

The duplicate will be disposed of as follows :—

- (a) Where the deceased, not having been at the time of his death a member of the Indian Services, has died elsewhere than in India, it will be kept with the regimental or other proper records.
- (b) Where the deceased was a member of the Indian Services at the time of his death or has died in India, it will, if he was an officer, be sent to the Secretary to the Government of India in the Military Department, and if he was a non-commissioned officer or man of His Majesty's British Forces, it will be kept with the regimental records, unless a surplus is transferred to the Administrator-General of the Presidency, or Province, under Section 26 (1) of the Act, in which case it will be sent to him. It will also accompany the remittance of a surplus under Section 26 (2) of the Act.

8. Where payment of the preferential charges is secured under Section 5 of the Act, the committee of adjustment may abstain from securing and making an inventory of the effects, if so requested by the person paying or securing payment of the preferential charges.

9. The effects secured will be kept in a place of security until duly sold or otherwise disposed of.

10. The expression "regulation area" means the station, colony, or command, or such other area as may, in case of doubt, be determined by the Secretary of State.

(Section 2 of the Act, § (1).)

11. The actual and necessary expenses of the funeral, in the United Kingdom or the colonies, of a warrant officer, non-commissioned officer, or man, will be borne by the public to such extent as may be provided for in the allowance regulations.

(Section 5 of the Act.)

12. The expression "any person" means the representative of the deceased, the widow (if any), or one of the next of kin.

13. Where the committee of adjustment withdraw from interference in relation to property of the deceased in consequence of the representative of the deceased, or his widow, or one of his next of kin, paying in full the preferential charges, the committee will forthwith forward, together with the inventory (if made) and account, a report of the facts and circumstances as follows :—

Where the deceased, not having been at the time of his death a non-commissioned officer or man of His Majesty's British Forces, has died in India or was a member of the Indian Services, to the Secretary to the Government of India in the Military Department.

In other cases to the Secretary of the War Office.

(Section 6 of the Act, § (1), (2), (3).)

14. A committee of adjustment assembled out of the United Kingdom may, if it thinks fit, postpone any sale of the effects until such time as the next of kin of the deceased have had an opportunity of notifying their wishes regarding the sale, or the withholding from sale of any portion of the effects.

15. The effects to be sold will be disposed of in the most advantageous manner either by private sale or by fair and open auction. Such auction will be held in the presence of a member of the committee of adjustment.

16. Such of the effects as the committee of adjustment do not sell by auction may be sent by them to the representative or next of kin of the deceased ; but where it appears desirable to do so, the committee may annex any securities, share certificates, life assurance or other policies, bank deposit receipts or other documents of value to the original inventory and account for transmission to the War Office or India Office, as the case may be.

17. The practice of employing a non-commissioned officer in selling by auction such of the effects of a deceased officer or soldier

as are not otherwise disposed of, will be adopted only in cases in which it appears to be most advantageous for the estate of the deceased. When much trouble and responsibility are thrown upon the non-commissioned officer by his being so employed, a commission, payable out of the effects, at a rate varying from two to five per cent. on the amount of the produce of the sale, according to the greater or less degree of trouble and responsibility thereby caused, may be paid to him, and charged in the statement of the accounts of the deceased, the man's receipt for the amount being annexed thereto, together with the certificate of the commanding officer that his employment as auctioneer was most advantageous for the estate, and that the duties performed by him justify the remuneration charged.

(Section 6 of the Act, § (4).)

18. The committee of adjustment will discharge all debts that have accrued in the same station, colony, or command which are proved to their satisfaction, except where the death occurs in India, and the deceased is not a soldier of His Majesty's British forces, in which case their discharge is provided for in Section 26 of the Act and paragraph 54 of these regulations.

(Section 6 of the Act, § (6).)

19. Where the deceased was an officer, not having been at the time of his death a member of the Indian services, and has died elsewhere than in India, the committee of adjustment assembled elsewhere than in India will lodge the surplus in the hands of the district paymaster for credit in his next account, taking a receipt for the amount. This receipt, together with the inventory and the account of debts and credits, will be transmitted by the committee to the Secretary of the War Office, through the officer commanding at the station. Any committee of adjustment assembled under paragraph 5 to deal with the affairs of the deceased, if any, in India, will lodge any surplus in the hands of the Controller of Military Accounts for remittance to the War Office, forwarding a report of the action taken and the inventory and account of debts and credits to the Secretary of the War Office as above.

20. Where the deceased was a non-commissioned officer or man serving in His Majesty's British forces, and was in the pay of the Indian Government, the committee of adjustment will lodge the surplus in the hands of the officer paying the corps, who will credit the amount in the next casualty return. Where the deceased was not in the pay of the Indian Government, the surplus will be credited in the pay list of the troop, squadron, battery, or company to which the deceased belonged.

21. In cases where the deceased not having been at the time of his death a non-commissioned officer or man of His Majesty's British forces has died in India, or was at the time of his death a member of the Indian Services, the committee of adjustment will remit the surplus to the secretary to the Government of India in the Military Department.

22. Whenever a committee of adjustment remit or lodge a

surplus they will send or lodge therewith the original inventory and account, except as provided in paragraph 19.

23. In every case the officer present at the sale of effects will furnish a certified statement of the particulars thereof, which will be attached to the original inventory and account, and he will cause the amount produced by such sale to be carried to the credit of the account.

24. In cases in which paragraph 20 applies, the paymaster or other officer paying the corps will ascertain that all the articles reported in the inventory furnished to him as forthcoming are accounted for in the particulars of the sale, and will annex the inventory and account, and the particulars of the sale, to the current account or casualty return rendered by him, and will state therein the balance, debtor or creditor. In cases in which paragraph 21 applies, the military secretary will have the inventory and account, and the statement of the particulars of the sale, compared and examined.

25. Where a regiment of His Majesty's British forces is stationed in India, monthly casualty returns, made up according to the printed form, will be transmitted to the Secretary of State for War through the controller of military accounts in the Presidency, and sums therein mentioned will be stated in sterling money.

With respect to His Majesty's Indian forces, similar returns will be transmitted to the Secretary of State in Council of India.

26. Casualty returns from India will specify in each case whether the deceased was known to be possessed of property of any description whatever besides that stated in the casualty return, but not actually realised when the return is made. If any such other property is known, a statement of the particulars thereof, made out in duplicate, will be forwarded with the casualty return, and a memorandum will be annexed thereto of the steps that have been taken for recovering or realising the same under the Act. If no such other property is known, a memorandum to that effect will be made on the casualty return.

27. Where a deceased officer, warrant officer, non-commissioned officer, or man leaves a will, then, if representation is not taken out, the original will, and, if representation is taken out, a complete and authenticated copy of the will, will be sent, along with the inventory, account and other papers, by the committee of adjustment, and will be transmitted to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require. Where the original will is sent, a complete and authenticated copy of it will be first made under the direction of the committee of adjustment, and will be kept with the regimental or other proper records.

**(Section 7 of the Act.)**

28. Payments to the next of kin, or legal representatives of deceased soldiers of His Majesty's British forces will be made in accordance with the directions on this point in the Financial Instructions. As regards deceased officers, where representation is not taken out, the surplus will be disposed of as directed in

paragraph 19. If, however, the death occurs in India, or the deceased was at the time of his death a member of the Indian Services, the surplus will be remitted by the Secretary to the Government of India in the Military Department, as directed in paragraph 55.

(Section 9 of the Act.)

29.<sup>1</sup> In cases in which representation is not taken out, payment may be made to or for the benefit of each of the persons appearing to be beneficially entitled to the estate, or, where it appears desirable, payment of the whole or a portion or portions of the residue may be made to one or more of the persons beneficially entitled for their own benefit or for distribution between themselves and the other persons entitled to the amount so paid, or the whole or part of the residue may be invested as authorised by Section 9 of the Act for the persons beneficially entitled or any of them. Payments may be made by crediting the payee's account, whether private, regimental or other, or by handing to the payee or posting to his last known address a cheque, draft, postal order, money order or other similar instrument.

(Section 10 of the Act.)

30. The notice under Section 10 of the Act will be published in the London Gazette as soon as may be convenient, and will, with such variations as circumstances require, specify the name, rank, and regiment of the deceased, and the amount of the residue.

(Section 11 of the Act.)

30A.<sup>2</sup> The medals of an officer or soldier dying in the service whether issued before or after his death will be disposed of as follows :—

- (1) If there is a will the medals will be sent to the person who, in the opinion of the Secretary of State, is named in the will as being intended to receive them or any articles which would in the opinion of the Secretary of State include them, or as being a general or residuary legatee of the estate.
- (2) In default of and subject to any such testamentary disposition the medals will be sent to the next of kin, in the following order of relationship :—widow ; eldest surviving son ; eldest surviving daughter ; father ; mother ; eldest surviving brother ; eldest surviving sister ; eldest surviving half-brother ; eldest surviving half-sister.
- (3) In the case of a universal or residuary bequest to more than one person either in common or jointly or where medals cannot be disposed of as in (1) or (2) above, they may be sent to any relative or other interested party, who, in the opinion of the Army Council, will preserve them with due care as a memorial of the deceased.

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1. New regulation dated 24th July, 1917.

2. New regulation dated 11th May, 1917.

**30b.<sup>1</sup>** In the case of orders and decorations, other than medals, issued after the death of the officer or soldier, the same procedure will be followed as in the case of medals, as laid down in paragraph 30a.

(Section 14 of the Act.)

**31.** The committee of adjustment (in-India) will deliver over the effects secured by them to the Administrator-General only in case they apprehend that considerable difficulty or delay may arise in or about the collection or realisation of the effects and credits of the deceased, in consequence of the character of any investment, or in consequence of it being requisite to institute some action or suit in relation to the property of the deceased, or in case there is some other peculiar circumstance connected with the property making it, in the judgment of the committee, expedient to take that course.

**32.** Where the committee of adjustment deliver over effects to an Administrator-General, they will do so as soon as practicable after they have determined to take that course.

**33.** Where the committee of adjustment deliver over effects to an Administrator-General, they will forthwith forward, together with the inventory and account, a report of the facts and circumstances, as follows :—

Where the deceased was a non-commissioned officer or man of His Majesty's British forces, to the Secretary of the War Office ; in other cases, to the Secretary to the Government of India in the Military Department.

**34.** The Administrator-General will remit to the Secretary of State for India the balance of the estate as soon as possible after the discharge of all debts and liabilities, and after the payment to any persons resident in India of the share or shares to which they may be legally entitled. He will further submit to the Government of India, for transmission to the India Office, a half-yearly return of these estates and the manner in which they have been disposed of.

(Section 22 of the Act.)

**35.** In the case of an army paymaster, the committee of adjustment will, if possible, comprise a member of the Army Pay Department.

The committee of adjustment are to forthwith remit the surplus to the Secretary of State for War, through the district account or casualty return (see paragraphs 19 and 20), and the residue will then be applied in discharge of any preferential claims that may remain unsettled, or of any claims in respect of public accounts for which the deceased was responsible. Any portion of the residue then remaining will be paid or applied in accordance with Section 9 of the Act.

(Section 23 of the Act.)

**36.** In all cases of desertion, absence without leave for 21 days, and of a soldier being delivered up as an apprentice, or being

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1. New regulation dated 30th May, 1918.

convicted of felony by the civil power, the committee of adjustment will be composed in like manner as in the respective cases of death, and the foregoing regulations relative to the respective cases of death will be applied as far as the difference of the circumstances will admit.

37. The kit of an apprentice will be disposed of as provided in the Clothing Regulations, and should he be in possession of any plain clothes when claimed by his master, such clothes will not be sold but returned to the man.

38. In the case of the desertion of a soldier the effects (other than the free kit of necessaries) will be sold as soon as may be convenient after he has been declared a deserter, or been absent without leave for 21 days (but within three months from the date of desertion). His necessaries will be retained in store for six months as laid down in the Clothing Regulations for re-issue to him in the event of his rejoining. After six months the articles will be available for issue to any rejoined deserter, the value of the necessaries so issued being credited to the non-effective account of the original owner. If, however, the deserter should rejoin while any articles of his necessaries remain unsold, and if he should require such articles for his military purposes, the articles will be returned to him, and he will not be subject to forfeiture in respect thereof.

39. The proceeds of the sale of the effects will be credited in a statement of the deserter's accounts (his "non-effective account"), exhibiting his assets and such of his liabilities as would, under the Act, be preferential charges against the estate. Any sum deposited by the soldier in the regimental savings bank will also be credited in the non-effective account.

40. The balance on the non-effective account shall be applied, so far as it will extend, for the purposes and in the order following, that is to say—

- (a) In payment of any debts due to the public on account of articles of public property made away with, or otherwise lost on desertion, and of any other debts that may be due to the public.
- (b) In payment or satisfaction of such other debts or liabilities of or claims against the soldier, as the Secretary of State for War or the Secretary of State in Council of India shall think fit to allow, including herein claims by reason of any criminal or wrongful act of the soldier.

41. Should any balance then remain the amount will be credited in the accounts of the Paymaster or other accountant in whose accounts the pay of the man to the date of desertion is charged.

42. If the soldier shall rejoin or be recovered to the service within three years from the date of desertion, or, in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraph 40, may be applied in payment of any debts due on account of articles of necessaries issued to the soldier on his rejoining, or of any debts due on account of his re-equipment.

43. If the soldier shall rejoin, or be recovered to the service



within one year from the date of desertion, or in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42 may be repaid to the soldier himself.

44. Any balance remaining after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42, shall, at the expiration of three years from the date of desertion, be considered as forfeited, and will be disposed of as the Secretary of State for War or the Secretary of State in Council of India respectively may determine.

45. Any articles of private property which may be in the possession of the deserter on his apprehension, or on his rejoining from desertion, shall be sold, and the proceeds, together with any money of which he may be similarly in possession, shall be applied in payment of the debt (if any) on his non-effective account, and any surplus shall be disposed of as provided in paragraphs 40, 42, and 43. If, however, the deserter be not retained in the service, but discharged, any plain clothes of which he may be in possession shall not be sold, but be utilised in accordance with the provisions of the clothing regulations.

46. Should there be reason to believe that any property or money left behind by the soldier on his desertion, or subsequently found in his possession, has been obtained by theft or fraud, the Secretary of State shall be empowered, at his discretion, to restore such property, or to apply the amount realised by the sale thereof, or the amount of such money towards making good the loss caused by the theft or fraud.

47. In the case of a soldier being delivered up as an apprentice, or convicted of felony by the civil power, the surplus remaining in the hands of the committee of adjustment, together with any balance of pay that may be due, will be applied in all respects in the same manner as mentioned in paragraphs 40, 42, and 43, except that no payment of the residue, under paragraph 43, shall be made to any soldier convicted of felony until he shall have undergone such punishment as he may have been sentenced to for the same.

\* \* \* \* \*

(Section 24 of the Act.)

48. The manner in which it shall be ascertained that a person subject to military law is insane shall be by the finding of a Board of Officers of the Army Medical Service, or Indian Medical Service, jointly or severally, or by the finding of the Director-General of the Army Medical Service or the Director of Medical Services, India.

49. In cases of insanity the committee of adjustment will be composed in like manner as in the respective cases of death.

**50.** The foregoing regulations relative to the respective cases of death will be applied in a case of insanity, as far as the difference of the circumstances will admit; except that whenever possible the sale of effects will be deferred until, in the case of an officer, he is removed from the active list, and in the case of a soldier until he is discharged; and further that the committee of adjustment will forthwith remit or lodge the money remaining in their hands to or in the hands of the army paymaster, military secretary, or other officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death, and he will forthwith transmit the same to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require.

**51.** The same will be then, with all convenient speed, applied for the benefit of the officer or soldier to whom it belongs, in such manner as the Secretary of State for War or the Secretary of State in Council of India (as the case may be) in his discretion thinks fit.

(Section 26 of the Act, § (1).)

**52.** As soon as possible after receiving the surplus from the committee of adjustment, the Secretary to the Government of India in the Military Department will cause the notice under Section 26 (1) of the Act to be published by advertisement in the Government Gazette of the Presidency in which the deceased was last quartered.

**53.** The notice will be in the following form, with such variations as circumstances require :—

*The Regimental Debts Act, 1893, Section 26, § (1).*

Notice is hereby given :

First. That information has been received by me of the deaths of the Officers, Warrant Officers, non-commissioned officers, and soldiers named and described in the subjoined table.

Secondly. That there have been received by me, as the surplus of their respective properties, the amount set opposite their respective names in the same table.

Thirdly. That all claims by creditors against the respective properties of the deceased are to be lodged with me within two calendar months from the date of this notice.

(Signed) A.B.

Military Secretary.

Calcutta                      day of

THE TABLE BEFORE REFERRED TO.

Num ber.	Christian name and surname in full of Officer, Warrant Officer, non-commissioned officer, or soldier deceased	Branch of Service to which deceased belonged.	No. of regiment.	Rank of deceased.	Place of death.	Date of death.	Amount of surplus.	Whether deceased is known to have left a will or not.	Other particulars respecting deceased and his property and remarks.	Number
1										1
2										2
3										3
4										4

**54.** At the expiration of two months from the date of the first publication of the notice, the military secretary will, in the following cases, proceed to discharge demands of such claimants as lodge claims with him :—

- (1) If the surplus does not exceed 1,000 rupees, and the claims lodged do not exceed in the whole 10 per cent. on the amount of the surplus.
- (2) If the surplus exceeds 1,000 rupees, and the claims lodged do not exceed in the whole the sum of 100 rupees.

(Section 26 of the Act, § (2).)

**55.** In those cases in which, after the discharge of claims under paragraph 54 of these regulations, the military secretary does not dispose of the surplus locally under Section 7 of the Act, he will, as soon as possible after two months, and within six months after the first publication of the notice, remit the surplus as follows :—

In the case of members of the Indian Services<sup>1</sup>, to the Secretary of State in Council of India.

In other cases to the Secretary of State for War.

<sup>1</sup> The term ' Indian Services ' in these regulations comprises officers of His Majesty's Indian Army and His Majesty's Indian Medical Service, and officers and warrant officers of departments under the Government of India and the Commander-in-Chief in India.

**Additional (Active Service) Regulations, dated 10th April, 1915 (as amended 12th May, 1919).**

### ROYAL WARRANT.

*Regulations under the Regimental Debts Act, 1893.*

**GEORGE R.I.**

WHEREAS WE deem it expedient to make Regulations under the Regimental Debts Act, 1893, to meet the special circumstances of active service.

OUR WILL AND PLEASURE IS that, notwithstanding anything contained in the Regulations made under the Warrant of Her late Majesty Queen Victoria, dated the 30th day of August, 1893, as amended by subsequent Warrants, the following Regulations shall have effect until Our further Will and Pleasure is made known :—

1. In the case of active service the Commander-in-Chief of Our Forces in any area of operations may appoint a standing Committee of Adjustment at the Base or other convenient locality within the area of operations to deal with the local affairs of any or all persons dying in or through the campaign while subject to military law, in lieu of any Committee of Adjustment already provided by the Regulations.

2. The operations of such a Committee may include any of the duties already imposed upon Committees of Adjustment by the Regulations or may be limited to—

- (a) Securing the effects of the deceased in the said area ;
- (b) Ascertaining the amount of the preferential charges on the property of the deceased ;
- (c) Paying the preferential charges or local debts as far as practicable out of any cash belonging to the deceased's estate ;
- (d) Transmitting any balance of cash to the Paymaster ;
- (e) Transmitting any articles of personal property for custody to such place as the Secretary of State may approve or direct ;
- (f) Rendering a report to the Secretary of State through the Paymaster showing what action has been taken by them and what preferential charges or debts known to them have been paid or left unpaid, with a view to payment being made or secured if necessary.

The operations of the Committee may be still further limited if necessary.

3. In such a case the Paymaster may pay out of any sums coming into his hands or under his control due to the deceased's estate any preferential charges or local debts left unpaid by the Committee, and shall remit or credit any balance remaining to or as directed by the Secretary of State for War, the Secretary of State for India in Council, the Secretary of State for the Colonies, or the Secretary to the Government of India in the Army Department, as the case may require or as may be directed, and shall

at the same time render a statement of the transactions which have taken place in the case and forward the report of the Committee of Adjustment.

4. The power of appointing a standing Committee given by these Regulations shall not affect the power of appointing Committees of Adjustment in accordance with the former Regulations where thought fit.

5. Any standing Committee appointed under these Regulations may at any time be dissolved by the Commander-in-Chief, and the nature of its operations may from time to time be altered or defined by him, or it may be removed to and act in the United Kingdom, or elsewhere outside the area of operations, as may be convenient, and in that case Our Army Council, Our Air Council, the Secretary of State for India in Council, the Secretary of State for the Colonies, or the Secretary to the Government of India in the Army Department, as the case may render convenient, or an officer deputed by any one of them, shall exercise the functions of appointment of additional or future members of such Standing Committee, or of alteration of definition of the nature of its operations, or of its dissolution, instead of the Commander-in-Chief by whom it was appointed.

6. The former Regulations shall apply to any standing Committee of Adjustment appointed under these Regulations save in so far as may be inconsistent with these Regulations.

7. Where within the area of operations any person subject to military law deserts or is found in the prescribed manner to be insane these Regulations shall apply in the same manner as if he had died in or through the campaign at the time of his desertion or insanity, as the case may be.

Given at Our Court at St. James's, this 10th day of April, 1915, in the 5th year of Our Reign.

By His Majesty's Command,

KITCHENER.

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### **Royal Warrant—Soldiers' Effects Fund.**

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**VICTORIA R. & I.**

WHEREAS by our Warrants of the 12th June, 1884, and the 16th July, 1887, We are pleased to make regulations for carrying into effect the provisions of Section 18 of the Regimental Debts Act, 1863, respecting the undisposed of residues of the effects of persons dying on service while subject to military law ;

AND WHEREAS by the Regimental Debts Act, 1893, which comes into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ;

AND WHEREAS We deem it expedient by this Our Warrant

to make regulations for carrying into effect the provisions of Section 10, § (2), of the Regimental Debts Act, 1893 ;

NOW, THEREFORE, OUR WILL AND PLEASURE IS, and We do by this Our Warrant direct, as follows :—

1. Our Warrants of the 12th June, 1884, and the 16th July 1887, shall be and the same are hereby cancelled as from the 1st October, 1893.

2. All such undisposed of and unappropriated residues, mentioned in Section 10, § (2), of the Regimental Debts Act, 1893, as are now in the hands of Our Secretary of State for War, and are applicable as mentioned in that subsection, together with any income or accumulations of income accrued therefrom, shall forthwith, and all such undisposed of and unappropriated residues, as shall, from time to time, hereafter be in the hands of Our Secretary of State for War for the time being, together with any income and accumulations of income accrued therefrom, shall, from time to time, until We shall by Our Warrant direct to the contrary, be paid over and transferred unto the Official Trustees for the time being of the Patriotic Fund ; and We do hereby order and direct the payment over and transfer of the said residues and income and accumulations of income accordingly.

3. All residues and income and accumulations of income so to be paid over or transferred as aforesaid from time to time, shall form one fund to be called the " Soldiers' Effects Fund," to be under the management and control of the Executive Committee for the time being of Our Commissioners for the time being of the said Patriotic Fund, but subject to and under such orders and regulations as may from time to time be made by Our said Commissioners or any three or more of them ; and shall be applied in payment of such compassionate, annual, or other allowances, to the widows and children or other dependent relatives of soldiers dying on service, or within six months after discharge, and generally in such manner for the benefit of such widows and children or other dependent relatives of soldiers dying as aforesaid, as the said Executive Committee, or any two or more of them, shall, from time to time, think fit, preferential consideration being given to the widows and children of soldiers on the married establishment, who—

- (a) Were killed in action, or died of wounds received in action, or from illness which can be directly traced to fatigue, privation, or exposure incident to active operations in the field, within 12 months of sustaining such wound or contracting such illness ;
- (b) Died from an injury directly traceable to military duty within 12 months of sustaining such injury ;
- (c) Died from illness directly traceable to fatigue, privation, or exposure in the performance of military duty.

4. The widows and children of Mobilised Army Reserve men dying as aforesaid shall be considered as on the married establishment.

5. The said " Soldiers' Effects Fund " shall be held by the Official Trustees for the time being of the said Patriotic Fund,

on behalf of Our said Commissioners for the time being as having the management thereof. Our said Commissioners shall be at liberty to invest the said "Soldiers' Effects Fund" upon such investments as they or any three or more of them shall from time to time think fit, and shall keep separate accounts of the said Fund.

6. This Warrant shall come into operation on the 1st October, 1893.

Given at Our Court at Osborne, this 22nd day of August, 1893, in the 57th Year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

### The Friendly Societies Act, 1896.

[59 & 60 VICT., c. 25.]

Extract from

*An Act to consolidate the Law relating to Friendly and other Societies.*

[7th August, 1896.]

43.—(1) A person shall not, by reason of his enrolment or service . . . . as a naval coast volunteer, Royal Naval volunteer, naval artillery volunteer, or in any corps of <sup>Militiamen and volunteers.</sup> . . . . volunteers whatsoever, lose or forfeit any interest in a friendly society or branch whether registered or unregistered which he possesses at the time of his being so enrolled or serving, or be fined for absence from or non-attendance at any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding.

### Official Secrets Act, 1911.

[1 & 2 GEO. 5, c. 28.]

With specific amendments enacted by the Act of 1920; [10 & 11 GEO. 5, c. 75] see p. 900.

*An Act to re-enact the Official Secrets Act, 1889, with amendments.*

[22nd August, 1911.]

1.—(1) If any person for any purpose prejudicial to the safety or interests of the State— <sup>Penalties for spying.</sup>

(a) approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; or

(b) makes any sketch, plan, model, or note which is calculated

1. This is applied to the Territorial Army by the T.R.F. Act, 1907, and Order in Council, dated March 18th, 1908.

to be or might be or is intended to be directly or indirectly useful to an enemy ; or

- (c) obtains, collects, records, or publishes, or communicates to any other person any secret official code word, or pass word, or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy ;

he shall be guilty of felony.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State ; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place or any secret official code word or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved<sup>1</sup>.

Wrongful communication, &c., of information.

2.—(1) If any person having in his possession or control any secret official code word or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

- (a) communicates the code word, pass word, sketch, plan, model, article, note, document, or any information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it, or
- (aa) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State ;
- (b) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it ; or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof ;

<sup>1</sup> See also s. 1 (3) of the Act of 1920 (10 & 11 Geo. V., c. 72).



or (c) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information ;

that person shall be guilty of a misdemeanour.

(1A) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour.

(2) If any person receives any secret official code word, or pass word, or sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document, or information was contrary to his desire.

(3) [This subsection is repealed by the Act of 1920 (10 & 11 Geo. V., c. 75, s. 11 (2) sched. 2). See also s. 6 of that Act.]

3. For the purposes of this Act, the expression " prohibited place " means—

Definition  
of pro-  
hibited  
place.

- (a) Any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of His Majesty, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war ;
- (b) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty ; and
- (c) any place belonging to or used for the purposes of His Majesty which is for the time being declared by order of a Secretary of State to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy ; and
- (d) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any munitions of war, or any sketches, models, plans

or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by order of a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

4. [This section is repealed by the Act of 1920 (10 & 11 Geo. V., c. 75, s. 11 (2), sched. 2.) See also s. 7 of that Act.]

Person charged with felony under Act may be convicted of misdemeanour under Act.  
Power to arrest.

5. Any person charged with an offence which is a felony under this Act may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act.

6. Any person who is found committing an offence under this Act, whether that offence is a felony or not, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony.

Penalty for harbouring spies.

7. If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour.

Restriction on prosecution.

8. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

Search warrants.

9.—(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence of an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with

which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a superintendent of police that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

10.—(1) This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere.

Extent of Act and place of trial of offence.

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in the High Court in England or the Central Criminal Court, and the Criminal Jurisdiction Act, 1802, shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench.

42 Geo. 3, c. 85.

(3) An offence under this Act shall not be tried by any court of general or quarter sessions; nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

50 & 51 Vict. c. 20.

11. If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act:

Saving for laws of British possessions.

Provided that the suspension of this Act, or of any part thereof, in any British possession shall not extend to the holder of an office under His Majesty who is not appointed to that office by the Government of that possession.

12. In this Act, unless the context otherwise requires,—  
Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty;

Interpretation.

The expression "Attorney-General" means the Attorney or Solicitor-General for England; and as respects Scotland, means the Lord Advocate; and as respects Ireland, means the Attorney or Solicitor-General for Ireland; and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney-General in England;

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

The expression "document" includes part of a document;

The expression "model" includes design, pattern, and specimen;

The expression "sketch" includes any photograph or other mode of representing any place or thing;

The expression "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material or device, whether actual or proposed, intended for such use;

The expression "superintendent of police" includes any police officer of a like or superior rank; and any person upon whom the powers of a superintendent of police are for the purpose of this Act conferred by a Secretary of State;

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession;

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act.

. . . . .

### Official Secrets Act, 1920.

[10 & 11 Geo. 5, c. 75.]

*An Act to amend the Official Secrets Act, 1911.*

[23rd December, 1920.]

Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents.

1 & 2 Geo. 5, c. 25.

1. If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the Official Secrets Act, 1911 (hereinafter referred to as "the principal Act"), or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

(a) uses or wears, without lawful authority, any naval, military, air-force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive,

- or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform ; or
  - (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission ; or
  - (c) forges, alters, or tampers with any passport or any naval, military, air-force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document ; or
  - (d) personates, or falsely represents himself to be a person holding, or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement ; or
  - (e) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air-force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp ;
- he shall be guilty of a misdemeanour.

(2) If any person—

- (a) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorised by such department with regard to the return or disposal thereof ; or
  - (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable ; or
  - (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid ;
- he shall be guilty of a misdemeanour.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the State, subsection (2) of section one of the principal Act shall apply in like manner as it applies to prosecutions under that section.

Communications with foreign agents to be evidence of commission of certain offences.

2.—(1) In any proceedings against a person for an offence under section one of the principal Act, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision—

(a) A person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—

(i) He has, either within or without the United Kingdom, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) Either, within or without the United Kingdom, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person:

(b) The expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the United Kingdom, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed, or attempted to commit, such an act in the interests of a foreign power:

(c) Any address, whether within or without the United Kingdom, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

Interfering with officers of the police or members of His Majesty's forces;

3. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the chief officer or a superintendent or other officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour.

Power to require the production of telegrams.

4.—(1) Where it appears to a Secretary of State that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy,

used for the sending or receipt of telegrams to or from any place out of the United Kingdom, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(3) In this section the expression "telegram" shall have the same meaning as in the Telegraph Act, 1869, and the expression "wireless telegraphy" shall have the same meaning as in the Wireless Telegraphy Act, 1904.

32 & 33  
Vict. c. 73.  
4 Edw. 7.  
c. 24.

5.—(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended, shall as soon as may be send to the chief officer of police for the district, for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the chief officer of police shall keep a register of the names and addresses of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of one shilling with a certificate of registration, and every person so registered shall from time to time furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

Registration  
and regula-  
tion of per-  
sons carry-  
ing on the bu-  
siness of  
receiving  
postal  
packets.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars—

- (a) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him ;
- (b) any instructions that may have been received as to the delivery or forwarding of postal packets ;
- (c) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the post-mark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet ;
- (d) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered ;
- (e) in the case of every postal packet forwarded, the name and address to which and the date on which it is forwarded :

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any police constable.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding ten pounds, or to both such imprisonment and fine.

(5) Nothing in this section shall apply to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Postmaster-General under the Post Office Acts, 1908 to 1920, or the Telegraph Acts, 1863 to 1920.

Duty of giving information as to commission of offences.

6. It shall be the duty of every person to give on demand to a chief officer of police, or to a superintendent or other officer of police not below the rank of inspector appointed by a chief officer for the purpose, or to any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under the principal Act or this Act, and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information, and, if any person fails to give any such information or to attend as aforesaid, he shall be guilty of a misdemeanour.

Attempts, incitements, &c.

7. Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty of a felony or a misdemeanour or a summary offence according as the offence in question is a felony, a misdemeanour or a summary offence, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Provisions as to trial and punishment of offences.

8.—(1) Any person who is guilty of a felony under the principal Act or this Act shall be liable to penal servitude for a term of not less than three years and not exceeding fourteen years.

(2) Any person who is guilty of a misdemeanour under the principal Act or this Act shall be liable on conviction on indictment



to imprisonment, with or without hard labour, for a term not exceeding two years, or, on conviction under the Summary Jurisdiction Acts, to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding fifty pounds, or both such imprisonment and fine :

Provided that no misdemeanour under the principal Act or this Act shall be dealt with summarily except with the consent of the Attorney-General.

(3) For the purposes of the trial of a person for an offence under the principal Act or this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed or at any place in the United Kingdom in which the offender may be found.

(4) In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under the principal Act or this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under the principal Act or this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(5) Where the person guilty of an offence under the principal Act or this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

9. [The amendments effected by this section are included in the Act of 1911, s. 2 (1) (aa), s. 2 (1A) and s. 12 ("munitions of war")].

10. [This section specified minor amendments to the Act of 1911, which have been included therein.]

11.—(1) This Act may be cited as the Official Secrets Act, 1920, and shall be construed as one with the principal Act, and the principal Act and this Act may be cited together as the Official Secrets Acts, 1911 and 1920. Short title, construction and repeal.

Provided that—

- (a) this Act shall not apply to any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, Newfoundland, and India ; and
- (b) nothing in the principal Act shall be construed as preventing an offence under this Act which is to be tried summarily being tried in Scotland by the sheriff.

\*     \*     \*     \*

(3) [Repealed.]

(3) For the purposes of this Act, the expression "chief officer of police"—

53 & 54  
Vict. c. 45.

(a) with respect to any place in England other than the city of London, has the meaning assigned to it by the Police Act, 1890;

53 & 54  
Vict. c. 67.

(b) with respect to the city of London, means the Commissioner of the City Police;

(c) with respect to Scotland, has the meaning assigned to it by the Police (Scotland) Act, 1890; and

(d) with respect to Ireland, means, in the police district of Dublin metropolis, either of the Commissioners of Police for that district, and elsewhere the district inspector of the Royal Irish Constabulary.

### Emergency Powers Act, 1920.

[10 & 11 GEO. 5, c. 55.]

*An Act to make exceptional provision for the Protection of the Community in cases of Emergency.* [29th October, 1920.]

Issue of  
proclama-  
tions of  
emergency.

1.—(1) If at any time it appears to His Majesty that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life, His Majesty may, by proclamation (hereinafter referred to as a proclamation of emergency), declare that a state of emergency exists.

No such proclamation shall be in force for more than one month, without prejudice to the issue of another proclamation at or before the end of that period.

(2) Where a proclamation of emergency has been made, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by such adjournment or prorogation as will not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet and sit upon the day appointed by that proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

Emergency  
regulations.

2.—(1) Where a proclamation of emergency has been made, and so long as the proclamation is in force, it shall be lawful for His Majesty in Council, by Order, to make regulations for securing the essentials of life to the community, and those regulations may confer or impose on a Secretary of State or other Government department, or any other persons in His Majesty's service or acting on His Majesty's behalf, such powers and duties as His Majesty may deem necessary for the preservation of the peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transit or

locomotion, and for any other purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to His Majesty to be required for making the exercise of those powers effective :

Provided that nothing in this Act shall be construed to authorise the making of any regulations imposing any form of compulsory military service or industrial conscription :

Provided also that no such regulation shall make it an offence for any person or persons to take part in a strike, or peaceably to persuade any other person or persons to take part in a strike.

(2) Any regulations so made shall be laid before Parliament as soon as may be after they are made, and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof.

(3) The regulations may provide for the trial, by courts of summary jurisdiction, of persons guilty of offences against the regulations ; so, however, that the maximum penalty which may be inflicted for any offence against any such regulations shall be imprisonment with or without hard labour for a term of three months, or a fine of one hundred pounds, or both such imprisonment and fine, together with the forfeiture of any goods or money in respect of which the offence has been committed :

Provided that no such regulations shall alter any existing procedure in criminal cases, or confer any right to punish by fine or imprisonment without trial.

(4) The regulations so made shall have effect as if enacted in this Act, but may be added to, altered, or revoked by resolution of both Houses of Parliament or by regulations made in like manner and subject to the like provisions as the original regulations ; and regulations made under this section shall not be deemed to be statutory rules within the meaning of section one of the Rules Publication Act, 1893.

56 & 57  
Vict. c. 66.

(5) The expiry or revocation of any regulations so made shall not be deemed to have affected the previous operation thereof, or the validity of any action taken thereunder, or any penalty or punishment incurred in respect of any contravention or failure to comply therewith, or any proceeding or remedy in respect of any such punishment or penalty.

3.—(1) This Act may be cited as the Emergency Powers Act, 1920.

Short title  
and applica-  
tion.

(2) This Act shall not apply to Ireland.

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